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William Atwood, Esq;

the Late King William of Glorious Memory, Constituted

Justice of the Province of New York in
1703, and Judge of the Admiralty there,

a True Account of the Government and People of
the Province; particularly of Bayard's Faction, and the
Reason for which he and Hutchins stand Attainted; but
privied before the Lord Cornbury's Arrival, upon
knowledging their Offences, and begging Pardon.

L O N D O N ;

in the Year M D C C C I I I .

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to chose. DURHAMSHIRE GOVERNMENT TO THE GOOD SIR J. GOLDSBY
ED: I. GOV: OF THE BOARD OF HIBERNIAN FUND, & COUNCIL
AND THE LONDON BANK WIDOWS' TRUSTEES RELATING
TO THE IRISH FUND COMPANY, FROM THE GOOD LEVENH
GOV: OF THE GOVERNMENT OF THE IRISH FUND COMPANY.

10 OCTOBER 1811

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The C A S E of William Atwood, Esq;

By the Late King *William* of Glorious Memory, constituted Chief Justice of the Province of *New York* in *America*, and Judge of the Admiralty there, and in Neighbouring Colonies.

With a True Account of the Government and People of that Province; particularly of *Bayard's* Faction, and the Treason for which he and *Hutchins* stand Attainted; but Reprieved before the Lord *Cornbury's* Arrival, upon Acknowledging their Offences, and begging Pardon.

According to the Notion of the Transferrableness of Supreme Power, the Government of the Province of *New York* was the Propriety of the late King *James* while *Duke of York*; and both then, and afterwards, when annexed to the Crown, had been Despotick and Arbitrary in the Administration.

Not only the Laws which should have kept Papists out of Offices, were dispensed with, but the Power of making Laws, and raising Taxes, was exercised by Papists, and others their Adherents, without any Consent of the People by Representatives of the Revolution there. their Choice. With which, nevertheless, too many were well pleas'd, because they were indulged in all manner of Prohibited Trade, without regard to the Laws and Interest of England: Nor did such Traders ever feel the Smart of any Judgment or Sentence for the Crown. But the Body of the People being unacquainted with those undue Methods of enriching themselves, and Lovers of the English Nation and Laws; having certain Information of the Deliverance from Popery and Slavery in England, and the Nation's declaring for their Deliverer, thought themselves obliged to follow such a commanding Example. As is own'd by those who would have them thought a few inconsiderable Persons, who by Surprize got into Power; The People are universally inclined to the Revolution.

Most of them being of Dutch Extraction, tho born under the English Government, they profited *Bayard*, a cunning Dutchman, the Honour of Heading them: But he, being desirous to have the Power continue in the Adherents to Popery, was only for turning out the Profess'd Papists: And such Artifice to keep the Government for and under King *James*, his Agents absurdly labour to pass for a Design to forward the Revolution.

He refusing to comply with the universal Bent of the People, they chose one Mr. *Leisler*, an eminent Merchant, a German by Birth, who in his younger days had been bred to Arms. By his Care and Conduct they soon dispossessed them who would have kept the Fort at New York for the late King *James*: And did considerable Service against the French, who took that opportunity to invade the Province.

Mr. *Leisler* was by King *William* under his Sign Manual, as Governor of the Province, required to keep the Peace, till other Provision should be made: And yet under colour of a false pretence, that he kept the Fort against the King's Authority, because he would not deliver it to Major *Ingoldsby*, then only Captain of an Independent Company, who pretended to the Government, *Bayard* and his Party, having insinuated themselves into the Favour of a weak Governor Colonel *Slaughter*, procured Mr. *Leisler*, and one Mr. *Milborn*, an Englishman of Eminent Abilities and Worth, to be Tried for High Treason: And the said *Ingoldsby* being one of the Judges, they were Convicted and Attainted, and soon after Executed, contrary to Reprieves till the Pleasure of the Crown should be known, and to the most solemn Assurances given 'em by Colonel *Slaughter*, who but the day before visited them in Prison.

The Account of this coming to England, after Proofs, and hearing Col. *Dudley*, one of the Judges, all Circumstances being maturely consider'd in Parliament; their Attainders were Revers'd: Nor was any man more urgent for the Act of Reversal than the Lord *Cornbury*; no man had more pressed for their unpresidened Executions than *Bayard*. Six more, who had signaliz'd themselves in that Service to the Publick, being prudently withdrawn, were Outlaw'd for Treason and Murder.

giance for the future, and, as they thought, to secure the then Possession to the old Instruments of Arbitrary Power :

1. Recognizes their then Majesties Right.
2. Condemns the Exercise of any Power over the Subjects, unless deriv'd from their Majesties under the Broad Seal of England.

3. Makes it *High Treason* by any manner of way, or upon any pretence whatsoever, by Force of Arms or otherways, to disturb the Peace, Good, and Quiet of that their Majesty's Government there established.

This Act those very men who obtain'd it would now render absurd; and as if, according to its true intent and meaning, as far as can be gather'd from the Occasion, the Preamble, and the Enacting part, or at least from the late Construction of it, every petty Battery or little Treason would be such a Violation of Faith and Allegiance to the Crown, as is there provided against. And yet the warm Advocate who urges this, in the same Breath contends, that nothing is Treason within that Act, which is not a plain disowning the Right of the Crown, according to the Establishment; suitably to his Instance of addressing to the French King: But the Establishment of the Government there under the Crown of England, he supposes not to have been thought of. Tho he well knows, and Circumstances evince, 'twas principally intended: And the manner by which 'tis secured is manifestly new, in relation to the Law as it then stood.

According to others, whatever be the true meaning of that Act, it ought to have no effect, they supposing that all *Treasons in Foreign Parts*, notwithstanding the Legislature there, must be reduced to the Standard of the 25th of E. 3. Tho that Act leaves *Common-Law Treasons* to Parliamentary Decisions, and therein, without any Repugnancy to the Law of England, sufficiently authorizes General Assemblies in remote Plantations, in making such Matters *Treason* as were so at Common Law. But were there a difference; if the Legislature be but according to the Prerogative of the Crown, which is part of the Common Law, the People might, without any repugnancy to the Law of England, by their free Consent subject their Lives and Estates to those different Terms. In the like sense, the Learned Fortescue held that the Laws of England were always the same. However, there is no need of that Observation here; because, taking the whole Act together, it cannot by any reasonable Construction be thought to mean more or less than what was *Treason at Common Law*. The attending to which, will free it from all manner of Ambiguity or other Censure: And were there no such Act, the Government there could not be preserved, and the Laws impartially executed, without such apparent danger, that strict Honesty in Governors and Judges would pass rather for Madness, than a Moral Virtue.

'Tis certain Bayard and his Party thought they had gain'd a great Point, by having this Law confirmed by the King and Council; by which they might think the Peace, Good, and Quiet of the Government well settled and secured in their hands.

Then, as if they intended Moderation towards those, whose Crime was their early declaring for the Deliverer of the Kingdom of which that Province is a Member, they obtain'd another Act, for pardoning such as had been active in the late Disorders, as they call'd the Revolution there: And yet excepted out of it no less than Thirty of the principal English and Dutch Inhabitants of the Province; two of which are at this time of the Council there. And, as they pretended, for uniting the minds of the People, they by another Act, impower Commissioners of their Set, to tax Damages to such as should complain of suffering by the Revolution, as to them should seem meet, in Equity and good Conscience. If Summons was left at the House, or usual place of Abode, of any Person complained of, who should not appear at the day prefix'd, he was to be deem'd a *Defaulter*, a Decree was to pass against him, and Execution to issue thereupon, and all his Real and Personal Estate to be extended, to make satisfaction for the whole Demand. Nor was there to be any Relief, but for Error, and that before the like Set in Council.

The then Governor dying, that Party having prevailed upon Major Ingoldsby, by the demand of the Fort, to colour their intended Proceedings against Mr. Leisler and others; thinking the Major likely to support them in their Violences against the Authors of the Revolution there, set him up for Governor of the Province, contrary to the Act, of their own procurement, which declares, That none ought or can have Power, upon any pretence whatsoever, to use or exercise any Power over their Majesty's Subjects in that Province, but by their immediate Authority under the Broad Seal of England. And the Government being by such Authority, upon the Death of the Governor placed in the Council, it may deserve Consideration, whether by that very Act, such assuming of Power contrary to the establish'd Government, is not *High Treason*: And yet the Major for several Months acted as Governor; and from the 17th of August 1691, to the 26th of March 1692, pass'd several Patents, wherein he stiles himself Commander in Chief of the Province of New York.

In 1692, Col. Fletcher arrived with a Commission to be Governor; and found it not unprofitable to keep in with that Party, who were used to Applications to which the others were Strangers. That *Illegal Trade*, which had been carried on before with greater Privacy, then appear'd more open: Several *Merchants* and *Factors*, without controul Traded with the *Pirates* of Madagascar, and known *Pirates*, for considerable Sums of Money obtain'd *Protections*; and Members of the Council, particularly Col. Bayard and Mr. Nicoll had Money for procuring them; and the Colonel own'd that no Security was taken for their regular Trading; and that no Persons were prosecuted, under what Suspicion soever they lay. Indeed for a blind, they for the most part gave Bonds to Trade regularly; but Hanam a mean *Irishman*, advanced to be *private Secretary* to Col. Fletcher, was the common Security, and having the custody of the Bonds, cancell'd them.

Tryal, f. 17.
Vid. Mr. Nicoll's Argument.

Ib

Ib. It is plain by the whole purport of the Act, that it has made no new treason.

Vid. Fortescue.

Vid. Acts, f.

31. Act of Pardon,

f. 33.

Act for taxing

Damages, f. 34.

Major Ingoldsby's second assuming the Government.

1692.
Governor Fletcher.

Vid. Report to
Majesty from
the Lords Com-
missioners for
Trade and
Plant. March

and no Consideration prevailing with him to neglect any part of an excellent Governor, who was in the First Place to regard the Interest of the Crown and Kingdom, on which that Province depends; in subserviency whereunto he recommended one Mr. Weaver, an English Gentleman of known Integrity and Abilities, to be Receiver of the Publick Revenue, Collector of the Customs, and a Member of the Council; they made it their business to traduce his Lordship with the utmost Inventions of Malice. And he having observed to the Lords Commissioners for Trade and Plantations, that besides the Prejudice to England by their way of Trade, many of them by extravagant Grants of large Tracts of Land for little or no consideration, had greatly obstructed the improvement of the Country; they by their Agents, whom they liberally Supplied, endeavoured to blemish his Lordship, as the destroyer of their Trade, and one that had a design to invade their Properties, and dispose to his Creatures what he should not think fit to take to himself.

And, being under no apprehensions of Punishment from the then Courts of Justice, they acted within the Province as if there were no Government; Published false and scandalous Libels against the Governor; continued their illegal Trade; by their Publick Threats, discouraged all Informations against them; and with one Mr. French an Hot Englishman at the head of 'em, made a Tumult to prevent the seizure of forfeited Goods, and lock'd up and Imprison'd the Officers.

But these Matters were little, in comparison with their invasion of the Legislature: For there being Sheriffs of that Faction, who carried themselves unfairly in their Returns of Representatives, then consisting but of Nineteen, whereof Eleven sat by controverted Elections; those Eleven, being the greater Number, established themselves, chose French Speaker for his Noisiness and Warmth, brought all things into the greatest Confusion, without doing any manner of Service to the Publick; and necessitated the Earl of Bellamont to dissolve them, tho' his then Majesty's Revenue was near expiring.

The Disorders occasioned by these Men, were so great, that the Lords Commissioners for Trade and Plantations represented to the Lords Justices of England, that the Corruption in the main Body of the People of New York, by the long encouragement they had in many illegal Practices; was grown so great, and the Opposition rais'd against the Earl of Bellamont for his endeavouring to redress the same, and to lay open the Guilt of those that had been chiefly concerned therein, so strong; that unless his Lordship were particularly countenanced, and speedily supported by their Excellencies Authority, in the discharge of his duty; and that all, or at least the chief of those who had been most Guilty of the forementioned Miscarriges (among which were, the Fitting out, Commissioning, Receiving, and protecting Pirates for considerable Gratifications) "were discouraged, censured, or punished, as might be found necessary; it would be impossible for his Lordship to effect any thing of moment in that Province, which might be for His Majesty's Service, or for the good of the Province it self.

Upon this occasion the Lords Justices in a Letter to the Earl of Bellamont, express themselves extremely sensible of his Lordship's great Zeal and Diligence, in enquiring into and reforming the many Disorders and irregular Practices, that he had found in that Province; and commend him for it; confirm the suspensions of Mr. Nicol, Mr. Brook, and Mr. Pinhorn; wholly remove them from their respective Places, excepting such as any of them might hold immediately in their own Right by Patent under the Great Seal of England: And in the like manner remove Bayard, then one of the Council, for procuring Protections for Persons strongly suspected to be guilty of Piracy; and Frederick Philips for undue Practices in the carrying on and managing a great illegal Trade.

Since such were the occasions of the turning out these Men, 'tis easy to know what sort of London Merchants they were, (a) who complained of their uneasiness under the Charges his Lordship had made, whose Memorial the Lords Commissioners for Trade and Plantations, as they declared, sent the Earl of Bellamont only for his Information.

Some time after, the Lord Bellamont having given many Instances of the Favour shewn by Col. Smith, then Chief Justice (though never bred to the Law) to Pyrates and illegal Traders, and what sort of Law then obtained; the (b) Lords Commissioners for Trade and Plantations declare themselves "sensible, by the many Instances his Lordship had given in all his Letters, with relation to the ordinary Course of Justice, His Majesty's Revenue, Trade, Piracy, and every thing else, of the greatest want of some Able Lawyers, especially one for a Chief Justice, and another for an Attorney-General in that Province; and that having thereupon represented to His Majesty their Opinion, That two may be sent from hence to supply these Places, and that an establishment may be made here of suitable Allowance for their Encouragement, they sent Copy of their Representation and of a Minute of Council, shewing His Majesty's Approbation of a Proposal of 500 l. per Ann. for a Chief Justice. But told his Lordship he might in the mean while turn out Col. Smith, if his Lordship found reason to believe him Guilty of abetting Pyrates.

Soon after which, his Lordship turned out Col. Smith, and put in that worthy Gentleman Col. De Peyster; who modestly declined proceeding upon business, till some Lawyer might come from England.

The Lords Commissioners had likewise represented a necessity, as Trade was carried on, and Vnities interested or influenc'd in those Parts, for the Chief Justice to be Judge of the Admiralty in several Colonies; and that the Attorney should be Advocate. The first being propos'd to Mr. Arwood, with a desire that he would think of a fit Person for the other: After a dis-

(a) Letters from the Lords Commissioners for Trade and Plantations to the Lords Justices, 19. Octob. 1698.

(b) Ib.
Note, two have been since added by Act of Assembly, and four more late-

Ib.

Letter from the Lords Justices to the Earl of Bellamont, 10. Nov. 1698. Nicol, Brock, Pinhorn, Bayard, Philips.

* He was turned out for scandalous words of his Majesty.

Ib. Declared to be contrary to the duty of their Places, and the trust reposed in them.

(a) Let. from the Lords Commissioners to the Earl, 21. Aug. 1699.

(b) Let. from the Lords Commissioners, 11. Apr. 1700.

of the Government in the Council, and Col. Smith's usurpation.

Of Mr. Nanfan's entering upon the Government. Votes of the House of Representatives, 24. March 1699. Of Mr. Nanfan's treaty with the Indians.

Of the Arrival of the Chief Justice and Attorney General.

Wake's Case. Vid. Stat. 7 & 8. W. 3. c. 22.

The Consequence of just Sentences in the Admiralty.

the Commission from the Crown, was vested in the Council. But Col. Smith, tho' before put out of the Office of Chief Justice, continued the first of the Council; and by the Advice of Bayard, and that Party, who never were for a legal Government; Col. Smith pretended as President, to have the Authority of Governor; in which being justly opposed by the Majority of the Council, animated by Mr. Weaver; that Gentleman was never to be forgiven by the Faction against the Government.

The Disturbance occasioned by Col. Smith's groundless Pretension, ended by the coming of Capt. Nanfan, whom that Party greatly laboured to bring to their measures; and so far prevailed upon him, as to permit them a new Struggle upon dissolving an Assembly of which one Mr. Gouverneur was Speaker, whom they represented as an Alien; though upon that Question arising while the then Attorney General Graham was Speaker, 'twas justly and regularly determined, that he was within an Act of Naturalization.

While they were chusing that new Assembly, the L. Governor went to the City of Albany on the Frontiers against the French, to renew former Treaties with the Five Nations of Warlike Indians in the English Interest: From whom he obtain'd a Present to the Crown of a Tract of Land 800 Miles in length, and 400 in breadth; to which they seemed induced, by the hopes, that, with the Assistance of England, they might dispossess the French of a Fort they had lately built, to command great part of that Country.

Those Indians, who have been strict Observers of their Promises, firmly engaged to fight against all Enemies to the Crown of England; as they did afterwards, upon being pressed by the French to stand Neuters between them and England; such Neutrality having been opposed by the L. Governor and Council, as the ready means to furnish the French Emissaries with opportunities to debauch them.

Before the L. Governor's return to New York, Mr. Atwood and Mr. Brougham arrived there after above Three Months Voyage.

They were received with great Civilities by Col. De Peyster, eminent for his Hospitality and Kindness to Strangers, and by all the Members of the Council in the place. And publick Entertainments were made for them by Friends to the then Administration; from which Mr. Brougham soon withdrew, to gratify those who distinguished themselves by their opposition.

Mr. Atwood at the same time made no distinction of Parties, return'd every man's Civilities and clos'd with the first Proposal of going by Water with Mr. French, Mr. Matthews, another warm Man of that Faction, to meet the L. Governor in his Return from Albany. Being thus entred into their Acquaintance, of which they had given him no opportunity by any Visits, he seemed to share in their good Opinion, till the first occasion of doing Justice to the Crown, upon the seizure of one Capt. Wake's Ship, which had landed Goods to the Value of 8000 l. tho' not qualified to Trade, for want of a Register. And yet the then Naval Officer took the Master's single Bond, in the penalty of but 2000 l. to produce a Register within eighteen Months, or to bring back the Ship to be subjected to a Forfeiture. The Ship returning, Mr. Weaver exhibited an Information against it, in the then Admiralty-Court; where had the good Fortune to have a Sentence for its discharge, upon supposition, expressed in the Sentence, that the Bond was a legal Composition for the Forfeiture.

The Ship continuing under seizure, Mr. Weaver had caused another Person to inform again it in the Supreme Court, before the New Chief Justice's coming: But then, understanding that the Sentence in the Admiralty-Court would be a good Bar to that Information, he applyed to the Supreme Court for a Prohibition: Which, upon the Matter being fully suggested by Young Mr. Atwood, who was a necessary help to the Attorney-General, was granted, *quoad the supposed Composition*; and a Consultation denied; upon mature Consideration of Authorities relating thereto.

From that Sentence the Master appealed to the L. Governor and Council, who upon a long Argument made by the Chief Justice, without any Assistance from the Attorney, affirm'd it. From that Affirmance, they took out an Appeal to the King and Council, but seem not to have Prosecuted it; However, the Governor's Commission, with good reason, providing that Appeal which either may never be Prosecuted, or at least, cannot be determined, at such distance without great delays, shall not suspend Execution; the Chief Justice, as Judge of the Admiralty proceeded to condemn the Ship for the Forfeiture manifestly incurred.

These Matters, which were new to them and their Lawyers, gave a loose to such licentious Discourses against those Judicial Proceedings, as they had been used to, upon every check of Illegal Trade: And other Vessels having been condemned, one for want of a Register; and some with their Lading, for other Breaches of the Laws of Trade; the Merchants and Factors of that Party, found themselves so generally concern'd, that they talk'd of ensuring one another all Condemnations in the Admiralty; and their Insolence in railing increas'd beyond measure.

But as the Judge in every one of the Cases acted according to Law, which he is ready to make appear; of what consequence such Sentences are to England, may be gathered from one Instance of many; in that one of the condemned Vessels, of which a Scotch-man was Supercargo, had carried from New-Bristol near Rhode-Island, directly to Scotland, so much Tobacco, ought to have paid 800 l. Customs in England; and from Scotland brought a considerable quantity of their Woollen Manufacture: Great part of which, Armed Men of Suffolk County in the Province, noted for such Trade with those of Boston and Connecticut, and as obstinate as any in disobeying the Laws of England, carried off with a Resolution to oppose whatever Authori-

Mr. Governeur by the other, the choice fell upon the latter by one voice; he having Ten, and the other but Nine: Upon which Mr. Nicoll, and the whole Body, presented him for Speaker to the L. Governor in Council, where he was approv'd of; nor did any thing appear to the contrary, but that he was chosen as unanimously as he was presented.

Upon their going back to the House, Objections being made against Mr. Nicoll, and one Mr. Wessel, a Dutchman by Birth, as not qualified to be chosen, those two were order'd to withdraw till the matter should be determin'd; and then, but not before, they objected against the Speaker as not qualified; being, as they pretended, an Alien.

The next day, Mr. Nicoll, and Mr. Wessel, not regarding the Order of the House, entred it an outrageous manner with the Seven of their Faction, protesting against the Assembly's proceedings. From thence they went to the Fort, where they desired the L. Governor to dissolve the Assembly; and left with him a seditious Paper sign'd by them, disowning the Authority of the Assembly, for the fictitious Reason of the Speaker's being an Alien; which they suggested to be new discovery; tho the contrary was before justly resolv'd by the proper Judges.

At the same time they made large professions of readiness to serve his Majesty; which the Governor desiring them to manifest by their Service in the House, when an additional Duty, necessary for the Support of the Government, was newly expired; from that time they entred into a Conspiracy against him, and the then Administration; for the setting of which aside, they were resolved to spare no Money or Artifice.

Immediately after the L. Governor had denied their insolent demand of a Dissolution of the Assembly, he sent for the Chief Justice to acquaint him with it: Upon which he, thinking he had some Interest with Mr. Nicoll, undertook to endeavour to dispose him to more Temper; but Mr. Nicoll declined speaking with him: Yet afterwards, upon an accidental meeting, could not but own he and his Friends had been too warm; but intimated as if they were gone too far to recede.

Two of those who were return'd Members, having been declar'd incapable of serving, and even having deserted, Writs issued out for new Elections. They who met at the opening the Writ for Suffolk County, (a) absolutely refus'd obedience to his Majesty's Writ, declaring they would not proceed to a new Choice: For which they had been punisht as such Insolence deserv'd, and not Col. Smith's interposition prevailed against the Chief Justice; who saw plainly, that nothing but the Execution of the Law, could keep that County in a due dependance on the Crown in England.

A Person chosen for Westchester told the People, (b) it concern'd them to chuse such as would oppose the Council, and then they should pay no Taxes.

Most of those that were chosen upon the new Writs, appear'd in the House, and were sworn in order to act; but, through the persuasion of the Heads of the Faction, join'd in the like Papers: In one of which, (c) sign'd by Col. Willet and his Son, and one Tolman, being a Transcript barbarously spelt, of what the Heads of the Party had prepared for them; they say, The Complaints and Clamours of the People are great; and it cannot be expected they should think the Acts of the Assembly binding; and charge it with acting against the Rights and Privileges of his Majesty's Free English Subjects, the Laws of England, and that Province.

The Person who had recommended himself to the People's Choice for opposing the Council, (d) penn'd another Paper to the same purpose.

Notwithstanding all the Threats and Artifices of the Malecontents, the Assembly, consisting of sixteen, went on in the Service of the Publick; continued the additional Revenue for two Years; out of which, as a Mark of their Esteem for the Chief Justice, (e) they added 70 l.

Year to make his Salary there 200 l.; and made several useful Laws: among the rest, one effectually to oblige a busy Scotchman, and Partner with his Countryman Kidd the Pyrate, to account for Publick Moneys, in pursuance of a former Act.

And another no less busy Scotchman, Jamison, a Practiser of such Law as had pass'd there, who for burning the Bible had been sold a Servant to New York, where he endeavoured to propagate Atheism, and exchang'd his living Scotch Wife for a Dutch one; having been guilty of great Fraud as Deputy Secretary, which gave him an opportunity of obstructing a Patent of a considerable Tract of Land, and of procuring one to himself and others, of 1200 Acres, where they should chuse, within that Tract; contrary to the Agreement and Purchase made by those who took in Jamison, with another Company, excluded from the benefit of that Patent; after Jamison had been fully heard in Council, and a Paper put in by him consider'd, an Act of Assembly for executing that Agreement, brought up from the House of Representatives, pass'd with general Approbation.

But the Chief Justice having, at the desire of the L. Governor, drawn an Answer in writing to Jamison's Objections; that insolent Scot had the Impudence to impute this to a Bribe; and affirm before the Council, That one Lewis De Wit, Master of a Sloop, told him he brought from Esopus 50 l. for passing that Bill, and that the Chief Justice had it, or great part of it: Which the Master has absolutely denied upon Oath.

Jamison also taxed Col. Rutzen, a Member of the Assembly, who being a Magistrate in those parts, earnestly press'd the passing that Act, for securing the Peace; with giving the Chief Justice a Fee upon that account: Which, as the Colonel's Letter to the Chief Justice's Son has it, was not the first of Jamison's Lies: And yet this Scandal of his invention, is the only ground of the most heinous Article against the C. Justice.

While the Acts of that Session were preparing, the C. Justice having received Letters from

Vid. in their
printed Votes,
Wessel's Bond
to indemnify the
Sheriff for re-
turning him,
tho not qualifi-
ed according to
an Act of As-
sembly.

(a) Vid. Let. t. 8
the C. Justice
from the Secre-
tary of the
Lords Commis-
sioners for Trade
and Plant, by
order of their
Lordships, dat-
ed 29 Jan.

1701, 2.
The Paper sent
by the Sheriff of
Suffolk-County
upon the not ex-
ecuting the
Writ, &c.

seems to be an
Insolence which
ought to be pro-
secuted with
Vigor.

(b) Vi. Two Affi-
davits of this
matter.

(c) Vid. Copy of
the Paper.

(d) Vi. Let. from
the Secretary of
the Lords Com-
missioners, de-
claring their
Approbation.
Mr. Leving-
ston.

Jamison.

Vid. De Wit's
Affidavit.

Vid. Col. Rut-
zen's Letter.

Vid. the Arti-
cles against

honour'd him with a Correspondence ; and whose Reputation and Prudence had made wonderful a Settlement in few Years, as might well excite any man's Curiosity.

At Philadelphia he was not more surpriz'd with the Regularity, Beauty, and sudden Growth of the City ; than with that height of Ceremony, as well as Generosity, with which he was entertained by the Governor. So far he had the Company of the Attorney-General : But by the difficulty in spurring him on thither, and the necessity of leaving him behind for Business New York, the Chief Justice found it impossible to drag him so many Hundred Miles by Land as 'twas requisite to Travel, for publishing the Commissions in Rhode-Island, Massachusetts-Bay, New Hampshire, and Connecticut.

*Of the Election
of Aldermen for
the City of
New York.*

In their short absence in Pennsylvania, and the Jerseys, came on the Election of Aldermen for the City of New York : And Bayard's Party having excepted against the Returns of *Two* out of Six, they applied to the Lieutenant Governor to take to himself the Scrutiny ; but he would resolve upon nothing till the Return of the Chief Justice, who put them upon the legal Method of bringing *Mandamus's*. For which the Heads of them came to him in a Body, desiring, and as they said, relying on his equal Justice. To those *Mandamus's* the City in Committee returned, that the Aldermen Objected against, were duly Chosen.

But the Mayor Elect being of the Faction, their Counsel having pretended Defects in the first *Mandamus's*, they were gratified in their desire of New; upon which it seems they expected by the Mayor's Influence to get Returns to their Minds; or that these might be handles for Swearing their Men. The Morning that he himself was to be Sworn into his Office, he, with the Recorder, came to the Chief Justice, desiring his Advice, the Mayor declaring that he could not be satisfied to swear those who were Return'd. The Chief Justice told him, he was no Judge of the Right, which might soon be Determined in the Supreme Court, and that 'twas for the Peace of the City, that, in the mean while, they who were Returned should be Sworn. The Mayor still pretending Scruples, the Recorder observ'd, that by the Charter the Mayor for time being, and the Recorder, were to swear the Aldermen ; and that if the Mayor Elect would not be Offended, he and the then Mayor would Swear them, before the Mayor Elect should be Sworn. With this, which the Chief Justice then thought, as he still does, agreeable to the Charter ; the Mayor Elect declared himself satisfied, and the Aldermen were accordingly Sworn.

However, by the prevalence of the Faction, the Mayor seem'd to scruple Acting with the Aldermen ; but the Chief Justice going to Boston and other Parts, the Mayor who Dined with him that day, declared he would do nothing in the Dispute till his return. Yet Mr. Vesey, the Minister, with others of the Party, going with the Chief Justice to the Water side ; as Mr. Vesey was never good at keeping a Secret, he whispered the Chief Justice, that the Mayor was resolv'd to be an English Mayor, which, as he explained himself, was by Swearing the Pretenders to be Aldermen, (tho' one of them was a Faetious Dutchman) ; the inconvenience of which the Chief Justice represented to Mr. Vesey, desiring him to give no such Advice : Yet it seems, he and others prevail'd on the Mayor, by his sole Authority, to controul the return of the Common Council, and, without the Recorder, to swear those on whom he arbitrarily judged the Election to fail. And thus there was a double set of Aldermen, to the no small disturbance of the Peace of the City.

During part of these Disorders the Chief Justice was at Boston, whither his Admiralty Commission oblig'd him to go ; the Deputy Collector having inform'd him of a seizure of Wines and Brandies, Imported contrary to Law. But the Merchants there not approving of any Judge of the Admiralty not from among themselves, applyed to Mr. Wintrop, the former Judge, to hold a Court for that purpose ; in which he seem'd more forward than became his near Relation to the Parties concerned.

But the King's Advocate Mr. Newton, as became one of his Discretion, and Zeal for the Service of the Crown, refused to Prosecute before him.

This failing, as the Deputy Collector had too great a Dependance on the Merchants there, he to please them, as of his own Authority, caused an Appraisement to be made, and delivered the Wine and Brandy to a Scotch-Merchant, concern'd for the Importers directly from Quebec.

The Collector pretended to have sent the King's third of his Appraisement to the Custom House in England, but the Government there, being too Indulgent to such Trade, never insisted upon any share in the Forfeiture.

Mr. Atwood being desirous to avoid any Controversy, and yet to prevent the like encouragement to the violating the Laws of Trade for the future, proffered to allow the Officer to be Informer in the Admiralty Court, and to accept of that Appraisement if he would produce it, which he absolutely refusing to do, and standing in contempt of the Court, Mr. Atwood passed Sentence, charging him with the Wines and Brandies as by Law in his Hands, and committing him till he should perform the Sentence.

Upon this he preferred a scandalous Petition to Mr. Wintrop and the other Judges of their Superior Court then Sitting. Who treated the Judge and his Commission very contemptuously, not suffering him to speak unless he would go off from the Bench, where other Strangers stood. And tho' they ventured not to grant a *prohibition*, made an Order, giving the Officer the protection of that Court, till they should consider of what was within a Jurisdiction, excepted out of their Charter.

The unreasonableness and illegality of which Proceeding, is set forth in a large Memorial, left in the hands of the *Chief Justice* by the first opportunity transmitted to Mr. Secretary Hedge,

*Note, This matter is made one of the Articles against the C. Justice, vid.
Art. 5. That contrary to the words of the Charter of the City, and the constant usage and practice in like cases, he advised the late Mayor to swear the new Aldermen.*

Brand Scuyler.

Of the C. Justice's dispute with the Superior Court at Boston ; and their usage of the Crown's Admiralty jurisdiction.

Note, Levingston's Son, who was part Owner with his Son-in-Law, Capt. Vetch, had married the natural Daughter of Mr. Wintrop's Brother.

the Me-

an Opinion so ill Founded, and so Dangerous, greatly encreased the number of those, who took all Occasions to inveigh against him, as a destroyer of the Trade of those Parts, by a too rigorous enforcing the Laws of *England*: the Members of which Church there, shew'd a great Affection to those Laws, and Regard to him.

At his return to *New York* he found the City in a Flame, between the two sets of *Aldermen*: Of the Return the Faction would have taken to themselves the Determination of the Right; and *French*, from Boston, being Foreman of a Grand Jury, would have anticipated the Judgment of the Supreme Court, and proceedings by Presentments made by him and his Party in the *Jury*; one of which presentments declares their Friend chosen by [a Majority of Voices] another they will have to be chosen [by a Majority of the People]; which presentments were, upon motion made by Counsel, quashed for Incertainty; Note, This the 6:th Article against the C. J. there being no mention of any Right to chuse.

The *Mayor*, with the *Aldermen* of his Choice, did all they could to decline the Justice of the Court; but being obliged to submit to it, that Party was so enraged against the *Chief Justice*, that as the *Minister* inform'd him, those few of them who us'd to receive the Sacrament, declared they would absent themselves, because the *Chief Justice* was a constant Communicant; yet soon after expressed themselves satisfied with his equal Justice upon the actions for false Returns, of which they had gained Two out of Three: but one of them was by an Artifice, not discovered till afterwards; and by an unheard-of Barbarity they were likely to have gain'd the Third, or plainly to have Murder'd those *Jury-men* who would not comply: for each side having by consent named Six to serve on the *Jury*, the Twelve so Named, having withdrawn to consider of their Verdict, the six chosen by the Plaintiff, prevail'd over the others in the choice of an House: and tho a Majority of the Electors soon appeared to have been for the Defendant, those Six held out some Days and Nights with much Vigor, while the others were Faint and Languishing, and suffered the utmost extremities; till one of the Confederates was discovered by his Breath to have lately Drank; which occasioned the search in a private Closet, where Provisions were found conveyed from the under Room, by the lifting up a Board kept loose for that end.

Note, The *Jury* having agreed that the Election was in the Inhabitants paying *Scot* and *Lot*, the Collector of that Ward had cross'd several of that side who never paid.

This being discovered, they who were guilty of this Treachery to the rest, soon agreed with them in a right Verdict; which was a plain conviction of the gross partiality of their Friend the *Mayor*, who had ventur'd a Premunire to serve them.

Thro' the fraud of the *Collector* of the Taxes of one of the City Wards, who counterfeited Majority of *Scot* and *Lot* Men, the *Mayor* had Three Aldermen of his side, out of Six. And Three being enough by their Charter, to assist him in the disposing of the Freedoms of the City, he had proposed to the *L. Governor* the making all the *Soldiers* in *Garrison* free. But the *L. Governor*, tho he was not then aware what further use the *Faction* had of the *Soldiers*, besides strengthening them at Elections; yet knowing how destructive this would be to the privileges of the Citizens inhabiting *New York*, declared his dislike of the Project, and that if the *Soldiers* were made free, he would remove them from the place when Elections came on. However, the *Faction* were determined to this; and to represent themselves as the most numerous, resolved upon drawing the *Soldiers* to join with them, in their contempt and disowning of the then Government.

Of the proposal to make the *Soldiers* free of the City.

Which they supposed they might do with safety, being in constant expectation of the *Lord Cornbury's* coming *Governor*, and fully assured from their Old Friend *Honan* and others, that his Lordship was fully engaged in their Interest.

Bayard, with the Advice and Assistance of *Colonel Smith*, with two more of the *Council*, and *Jamison*, and other Practicers of the Law, prepared Three Papers, one of which was an address to His then *Majesty*, another to the *House of Commons*, and a third to the *Lord Cornbury*.

Of the Addreses.
 Prout Sam. Bayard's Let. 29. Jan. 1701.

The Last was chiefly a Compliment, giving him assurances of assisting him in the Support of the Government; while they were far from Professions of Duty under the then Administration. And tho' they speciously express a desire, that the name of *Party* and *Faction* may evapour; their Actions while in power, shew their meaning to be according to the *French* Conventions, or the shortest way with *Dissenters*, propos'd by one of their pacific Temper.

Note, This Jamison's Scoticism.

The Act of Parliament in *England*, declaratory of the Rights and Liberties of the Subject, having condemned the Committing and Prosecuting the Seven Celebrated *Bishops*, for humbly petitioning to be excus'd from concurring to the Power assumed of dispensing with, and suspending of Laws; declares it to be the right of the Subjects to petition the King, and that all Commitments and Prosecutions for such petitioning, are illegal. Thro' a false Construction put upon this, by the *New York Lawyers*, without any regard to the subject matter, which was only petitioning as such, humbly, and without *Faction*, or Matter justly censurable; the *Malecontents* were, were encouraged to act as if this Legal Liberty of petitioning the King, extended to every manner of Petition, however procured, and with whatever Multitudes; and that not only to the King, but to the *House of Commons*; tho not named in the Act.

Stat. 1 W.C.M. Sel. 2. c. 2. Note, The C. J. having observ'd the wrong Construction put up on that Act, that it mentions only Petitions to the King, and that all things lawful in England are me-

in the Plantations, where the King governs more by Prerogative than in *England*; In their 23d Article they falsely make him to have declared it a Crime to Petition the *House of Commons*, in the Plantations. Which yet their Print, f. 16 qualifies with [it may be.] But omitting comparison of the Plantations to *England*, makes him say [where the King governs by his Prerogative], wherein they grossly pervert what is said.

Through this inexcusable Ignorance of the Law, they stuff'd Addresses to the King, and of *Commons*, with the most libellous and scurrilous M-

The *Conspirators* thinking themselves at entire Liberty, at least, not to be restrained or punished by any Authority there; with the most inhuman Insolence, trampled on the Ashes of the late Earl of Bellamont, and represented a Governor in great Esteem with his then Majesty, the (a) *Lords Justices of England*, the (b) *Lords Commissioners for Trade and Plantations*, and the English Nation in General, as the worst of men: All his Pains for the good of the Province, in keeping it in due Subserviency to *England*, and in endeavouring to bring to justice the chief Authors of the Irregularities, and Mischiefs, which reigned there, they blemish'd with the foulest Aspersions; scandalizing him, as if all his Actions were aim'd at his private Gain, and setting up a Dutch Interest against the *English*; and by the assurance with which such Lyes were propagated, several were grossly imposed on to believe strange things.

They treated the Administration while *Mr. Nanfan* had the Power of Governor, not only with the last contempt, but as no Government. In one of their Libels, they say of that time, his Majesty's Subjects within the Province were oppressed; and yet could not assign one Instance of Oppression: They say farther, after taxing the Assembly with granting the Governor a Sum of Money to tempt him to keep them together, and a Sum of Money to the Chief Justice, to find Law and Form for their Bills and Proceedings; that [thereby] the Government was rendered vile and cheap in the eyes of the People. The Chief Authority under the Crown, vested in the L. Governor and Council, with the Representatives of the People in a General Assembly, they inveigh'd against as null and void; and their Acts as destructive of the Properties, Freeholds, and Inheritances of the Subjects. With these, and other scandalous Untruths, they corrupted such as they could influence, and incited them, not only to refuse paying Taxes and obeying any Law of that Assembly; but to cast off that Authority which they laboured to render cheap, and to rob of that esteem which should guard it.

If such Matters are to be thought trivial, and not to deserve the utmost severity of Law; it must be agreed, that they who are concern'd in the Administration of any Government, are much to blame, if they prefer the publick safety before such liberty in private Persons.

The outragious Matter of those Papers, was ev'n exceeded by the Manner of getting Hand to support them.

(a) Vid. Act 13: Car. 2. c. 5.
(b) Sam Bayard's Let to Mr. Adderly and Mr. Lodowick, 27 Jan. 1701.
(c) Richardson's true evidence.
(d) Vid. Hales P.C. p. 14 & 3 Inst f. 9, & 10. Where a publick and general end or pretence makes Treason of what otherwise would be but Misdemeanors.
(e) Vid. Bract. Qui machinatus fuerit vel aliquid fecerit in mortem Regis, vel seditionem regis, vel exercitus, &c. To the same purpose Glanvil & Fleta. Vide etiam Stamford and Mirror cap. 1. sect 4 per trahissent son host ou compasse sent de la fair. (f) Hutchins, Bayard's Instrument, with the rest of the Soldiers, besides those who sign'd at the Coffee-house.
(g) Fleming otherwise than in the Print;

A considerable Number, far above Twenty, were drawn in to sign those attempts (a) to all Matters establish'd in the State; and that publickly and tumultuously at a Coffee-house, where Bayard and his Son manag'd the Papers, which according to the Son's (b) own Account, were signed there by Lieutenant Matthews, and two Serjeants: And Bayard told one of them, (c) those were the Papers he was to sign.

Bayard having the custody and care of those Libels, procured several to sign at his own House among the rest, a Frenchman, ignorant of the Contents, telling him, (d) 'twas for the good of the Country: Numbers of Boys, Inmates, and Passengers through the City to Boston, or other Parts, were taken in to increase the Muster, and make them seem formidable; and the numbers they magnified and increased in their discourses: accordingly, one of them ask'd the Chief Justice, whether the Government could punish Three Thousand: Yet without the (e) Soldiers on their side, they fear'd the Law would be too hard for their Leaders: now therefore w^t the time, by Strong Drink, and the hire of Freedom of the City, (which the Conspirators afterwards procured for the Soldiers in a very illegal manner) to lift them to strengthen the Party, by such a Sedition, as would be likely to drive them to Action to avoid Punishment. And they who had dipp'd them so far, knowing that but few Months before, a Hundred of the very Soldiers had actually mutinied, and march'd in a Body under Arms to the Fort-gate, which was shut against them; might well think, when they had once engaged them to libel against their Commander in Chief, and that in such a manner as above, 'twould be easy, with a little more strong Liquor, to work them up to their avowed purpose, by any means to get rid of Government, which would not connive at their open violations of the Law, nor strain it to help them into the Saddle.

For this end, Bayard carried the Papers to the House of Hutchins, one (f) of the Aldermen, who having been a Lieutenant in the Fort, and keeping a publick House frequented by the Soldiers, was the most likely man to prevail with them.

By strong Liquors, with assurances of Freedom, which some took to be from the Servicemen, others, of the City, Hutchins drew in the Generality of the Common Soldiers. One (g) of them swore he set down the Names of Three or Four, to Lists or Rolls applicable to any Matter, there being nothing but Names; that he saw the Names of above Thirty Soldiers, but that most of the Garrison, being about 150 or 160 private Soldiers, had sign'd.

Their Print allows another to have sworn, That a great many of the Soldiers of the Garrison sign'd, and they expected thereby to be made free of the City. But then they add a Reason of their own, or rather Palliation, many of them being Tradesmen: yet in truth, that Witness swore he believed (h) all had sign'd.

If the framing and (i) collecting a multitude of Hands to a Petition of the Puritans, in the time of King James the First, with an Intimation that if 'twas not granted, many of his Majesty's Subjects would be discontented; was, in the Opinion of all the Judges, with the concurring Resolution of the House of Lords, such an Offence as is next to Treason and Felony in the Punishment; because it tended to the raising Sedition, Rebellion, and Discontent among the People; What is an act engaging the Soldiers in Sedition?

And what can be thought of their Stupidity, who will not believe all the matter above,

Governor found the matter to be of dangerous consequence; upon which he summon'd a Council, and appointed the Attorney-General to be there to hear the Evidence. He also desired the Evidence of that truly faithful Servant to the Crown, Captain Caldwell, Commander of the Ship of War.

The Proofs of the matter as above, appear'd undeniably, especially from the Evidence of a very worthy Witness, Mr. Clous; who having sign'd the Address to the Lord Cornbury, refus'd to give it up, because they reflected on the L. Governor, who had been very kind to him. This Letter inform'd the L. Governor, that he could be a very material Witness; and the same having had no time to make any application to him, he was then very ingenuous and positive, in several Criminal Expressions set forth in the Indictment.

It is, for certain, great Absurdity in the Notion too commonly obtaining, That be the Case, whether the Alleged true or false, if People think themselves aggrieved, they ought, in the Plantation, notwithstanding their common misfortune of being impos'd on by a few turbulent and daring men (who, if not timely prevented, may overturn a Government, before Orders come from England) to be at full liberty in any indefinite number, to express their sense of their Suppos'd Grievances; and that their ignorance of the Law ought to be their excuse. 'Tis reasonable to say, That because a boundless liberty is taken to accuse a Government, it will have no Power to right it self, by judging in its own Cause.

Indeed if ignorance of the Laws necessary for the preservation of all Governments, might be pleaded, few men have more pretence to it than Hutchins, who was Bayard's Instrument in the common Soldiers.

Hutchins being sent for to the Council, confessed the Fact, but pretended he knew nothing of the Contents of the Papers, nor from whence he had them; but referred himself to his Wife, who he said knew more of them than he. She being sent for, declared upon Oath, that she receiv'd them from Col. Bayard, and gave them about two days after to a Negro, but would own that she knew the Negro to be Bayard's.

The L. Governor and Council, considering that Hutchins, tho' an Alderman, was an ignorant Man, whom Bayard had engaged through an Interest with his Wife, intended Kindness to him; and therefore, tho' in their Warrant they recited the Act of Assembly, which plainly charged such Practices as he appear'd guilty of, Treason; they only committed him, till he should be tried by due course of Law.

Since he was not committed for High Treason, as he might have been, and there wanted no Evidence against him; this, surely, may answer the Objection against requiring him to produce the Papers which might tend to accuse himself.

Bayard and his Son being sent for, the Father justified the matter, upon the suppos'd Right of Petitioning what they pleas'd in Petitions to the Crown: And being ask'd by the L. Governor whether he had oppress'd him, or the People of the Province; said, in continuing the Assembly, as he pretended, the Speaker was an Alien: and yet, he well knew that he himself had the same Qualification with the Speaker; and several of Bayard's Faction were upon that Qualification, judicially allowed Votes for Aldermen.

Notwithstanding Bayard's appearing to be the chief Author of that Treason, within an Act of Assembly, to which he had contributed as much as any Man; yet he, and his Son, who stood with him, were only bound over to answer their Offence at the next Supreme Court, as Misdemeanor.

About this time Mr. Vesey, who then, with his noted Sincerity, made great professions of Loyalty for the Chief Justice; in discourse with him, not only argued that the Matter and Men of these Petitions were justifiable, but that it was not safe to Prosecute any upon them, for fear of an Insurrection, which he declared that he really apprehended; saying, That those Men had no Sense of Religion. Which Apprehension, considering how much more Numerous and strong they who stood by the Government were, than the Malecontents, could have no Foundation, but in the knowledge, that the Soldiers were engaged to support the Faction.

How necessary soever 'twas to put a timely Check to this growing Danger, such was the temerity of the L. Governor and Council, that they intended no farther Prosecution than for Misdemeanor; till, after frequent boasts of the Numbers engaged to assert the Petitions, Bayard, Finch, and Wenham, with Ripvandam, whom they haled along with them, as Heads of the Faction, on behalf of themselves, and some of the rest of the Freeholders and Inhabitants of the Province, came to the Council with an insolent demand of Hutchins's Liberty; under Colour of a Petition, which, though directed to the L. Governor and Council, as was justly observ'd, in effect disown'd the Governor's Authority to Govern; they having named the Lord Cornbury as immediate Successor to the Earl of Bellamont in that Government.

They say, Hutchins could not deliver the Copies of the Addresses enquired after, they being in their Hands and Custody: and till better advis'd by their Counsel, Mr. Emmet, they would have undertaken to justify them; but were prevail'd on to express themselves more discreetly, if they only hoped to make good the Legality of the Addresses.

Being severally without effect required to produce the Copies of the Papers, which they had possest, and officiously own'd to be in their Possession, such was the Moderation of the * Council, that they gave them time to consider till the next Day; when they Appear'd, and still persisting in their Refusal, had further time given them, which was lengthned to Three of them for several days. And yet, upon their being peremptory, they were not all Four committed for this contempt of the Council, and concealing the King's Evidence against others. but Three of them.

This is Note, The of the Arts & Sciencs against the of this. C. J. Vide to gro the men to justify this 20 H. 6 33 they & Rolls Abr. on the Tit. Trial f. E they * Of the fir the Indictme. 21 Feb. 1701 Note, their Print owners that the Grand Jury appre

ages. There was a hearing in the Common indorsed Bills Veto, and the Grand Jury was immediately discharged: nor

blame the prudent Order they made, for part of the City Militia to guard the Prison, till
might be found how the Ferment wrought.

These Methods had such effect as generally there is, when Governments boldly attack'd,
the beginning exert that Authority with which the Law invests them: all the *Coffee house*
Threats, and Boasts of Numbers, vanished: and then, even the mighty *Hector* Mr. French, end-
voured to recommend himself to those who were in the Administration, protesting that he
never Sign'd the *Libels*: And this though, but a little before, he had by way of Threats, to
the Council, they should see the Papers one time or other; but that the method of forcing the Paper
from them, looked not like Liberty.

Print Minutes,
21 Jan. 1701.

Of the Attorney-General's
false Opinion
of a contempt
of the Council

Vid. Minutes of
Council 21 Jan.
1701. 2.

1 Rolls Rep. f.

134. 219.

Hob. f. 114.

Stamf. 1. 2 c. 18.

p. 72. b. Rolls

Abr. Tit. Prerog.

f. 212. n. 5.

Citing Rot.

Parl. 25 E. 3.

The Attorney's
false and scandalous Letter
sent to England.

It must be own'd, that the L. Governor, tho' he had no Opinion of the Attorney-General's Law, having greatly suspected his bias against the then Administration; to try him, by a Letter desiring his Opinion of the obstinate refusal of Bayard, and others, to deliver the Papers in their Colony, which provoked and necessitated that legal method, which was most likely to be effectual for preserving the Government, at least from falling into contempt; The Attorney in Answer to that Letter, used Expressions so apparently not his own, that he was press'd by L. Governor to discover who penn'd his Opinion: wherein he was made a Tool to justify his Address, tho' no question was put to him concerning the Nature of it; and further to clear it as his Judgment in Law, that their refusal to deliver the other Addresses or Copies of them, was not such a contempt to the Council, or other offence, for which they might legally be committed. Being ask'd what reason or Authority he had for his Opinion, and giving none; while Chief Justice cited several Authorities to shew the lawful Power of the King's Council, and every Court had Power to commit for a Contempt, which the Attorney admitted this to be occasioned a Censure of him to be enter'd in the Minutes, that he had not discharged his duty to the Attorney-General.

Upon which his new Advisers prevail'd on his ductile Nature, to transcribe their Discourse in a Letter sent to England, wherein he intimates, that he was to be suspended for an Opinion which he most falsely represents as an Opinion upon the Addresses to the King, the Parliament, and Lord Cornbury; renders the disorders as in no measure occasion'd by the Matter and Man of procuring such a multitude of hands, and among them, no small number of the Soldiers; by the imprisoning Bayard for High-Treason; when the Fact, as he basely suggests, was only Signing those Addresses. Being so ignorant, or worse, as to make no difference between a single signing, and procuring Multitudes, even of Soldiers, to sign *Libels* against a Governor.

He as basely insinuates, as if the Prosecution was, because they were Churchmen of the English Party; for, says he, so it is our misfortune to have our distinction from the Dutch, who are of another Party, and would keep [us] under, having for some time bad the Smiles of the Government upon them.

This [us] plainly shews the Party concern'd in dictating that Letter; nor is it improbable that Mr. Vesey, who is full of his own Praises, added this;

" I fear the English and Church Party here, which is very considerable, and worthy to be encouraged in a Heathenish Land, and under the Doctrine of a Minister of exemplary Learning and Piety, have been much misrepresented in England, by the daily Aspersions are cast upon me and my self for having society with them.

According to their usual way, of calling all who are not engag'd in that Party, *Blasphemers*, the whole Land, except their little Flock, is accounted Heathenish; all of the Dutch Church, English in the several Counties, who are generally of that Church, in which Mr. Vesey was bred, and even the Chief of their own Faction, the French.

But the Earl of Bellamont, and they who were in the Administration in his time, and still the coming of the Lord Cornbury, are not to be own'd of the English or Church Party, the most zealous Asserters of their Rights, and the most constant Communicants. Mr. Vesey well knows, that himself assured the Ministers of the Church of England, at Boston, that Chief Justice was in the Interest of the Church, and best able to serve it, of any man in those Parts.

As to Mr. Vesey's Learning, 'tis no secret, that he went raw from the Boston University Dissenters from the Church of England, and was among them bred up to a popular way of Preaching, in which his Schoolboys Memory, and heated Fancy, gave him a reputation of his Talent at Invectives, which then were against the Church of England. If his Piety were exemplary, 'twould have shewn it self in conquering his Spleen; to say no worse. They his Congregation, who call themselves the English and Church Party, are so few, that they can't name Ten Englishmen of any Note, besides Persons in the Government, who us'd to receive the Sacrament there: 'Tis certain, neither the late Mayor Noell, nor the new French, ever did. But no man, without being well acquainted with the Attorney General Broughton, could think him so weak, and so little conscious of his failings in every respect, as to believe himself aspers'd, for keeping Company with them who would exclude all others from the Church, and their just Claim to be Englishmen. Indeed, as he has no more Government of himself than of his Family; his being too often overcome with Liquor, as well with their Persuasions, has been matter of great pity: But the Censures upon him were his stupid Neglect of the Business for which he was sent, and not putting his poor Abilities to the stretch.

Yet if it is his own, it must be agreed he has shewn a Masterpiece of Invention, making the best of a bad business, with the Dutch to keep: for the English and Churchmen, Copies of which were by the first opportunity transmitted to Mr. Secretary Hedge,

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(f) Hutchins
Bayard's In-
strument, with
the rest of the
soldiers, besides
those who sign'd
at the Coffee-
house.

(g) Fleming
otherwise than
in the Print;
print Notes

Government; issued out a (a) Proclamation, to assure men that none but the chief Promoters and Encouragers of that Sedition, should be prosecuted; and soon after (b) another, declaring that only Bayard and Hutchins should be prosecuted for High Treason, and no more than French, Wenham, and Ripponden for Misdemeanor; giving the last time to make his Submission; within which he prudently prevented a Prosecution.

(a) Proclam. 2.
Jan. 1701, 2.
(b) 10 March
1701, 2.

Mr. Vesey, who was far deeper in with them than became his Function, finding that no Persuasion, or Artifice, could prevent the proper Methods for keeping the Government from being overturn'd and trampled on; and that Bayard, who to promote his Ambition of being Head of a pretended English and Church Party, us'd to come to the English Church one part of the day, and as has been said, to supply Mr. Vesey with Beer; openly in his Pulpit inveigh'd against the Proceedings of the Government as contrary to Christian Moderation; as a temporal Move to yield to the Faction, intimated an approaching Change; and not trusting to the Church Weapons of Prayers and Tears, conjured up Hell-fire against those who sent their Brethren to Prison; nor did legal Proceedings escape the Name of the highest Injustice.

Of Mr. Vesey's assuming a Power to condemn the Legal Proceedings.

As a Key to such his Preachments, he in discourse with the L. Governor, declared, 'twas better with the English in King James's Reign, than in King William's: But, says he, this Dutch King won't live always.

Mr. Vesey's words of King William.

This was occasioned by the L. Governor's refusing to put off the Tryals of Dutch Bayard, and Hutchins an Englishman, in Understanding subjected to Bayard.

Note, Mr. Vesey's Father stood in the Pillory at Boston, for saying in King William's Reign, he knew of no King they had, but King James.

Mr. Vesey's Sollicitations proving Ineffectual, application was made to one in a Neighbouring Province, who had, at least, the Name of Governor; he being a Gentleman of much Address, * writ Letters to several to dissuade the Prosecution, in such manner as he thought most suitable to the Persons. The L. Governor and one of the Judges were told strange Stories of the Sense of other Provinces; as if not staying for the Lord Cornbury's coming, look'd like haste to do a job; that the Act on which they were to be prosecuted, was so absurd, that every Trespass would be Treason within it; that to execute any man upon it, would be Murder: And the Letter which was in that Person's Name, assured the L. Governor, that both his Person and Reputation were in jeopardy. Indeed, he writ to the Chief Justice in a Stile so different, and so agreeable to that good Breeding and Sense, of which that Gentleman is Master, that the Chief Justice could not well believe the other Letters came from the same Hand.

* Of Letters to dissuade the Prosecution.

The Tryals going on, the L. Governor well knowing what were the Abilities of the Attorney General, offered to have Fee'd the Chief Justice's Son for the King; but he chose rather to take the Prisoner's Fee, with the approbation of his Father, who propos'd the making Mr. Weaver Sollicitor General, to supply the defects of the Attorney. Mr. Weaver was very averse from it; but yielded to the importunity of the L. Governor and Council. And if he or some other fit Person had not undertaken that Service to the Crown, the Prisoners must have been acquitted, upon an absurd Indictment, foreign to the Proofs, drawn by the Attorney; whether wilfully or ignorantly, it may be difficult to determine.

Notice in the Charge, of va Threats of H. fire.

The Chief Justice thought it not improper in his Charge to the Grand Jury, to exhort them not to be deterred from their Duty, by vain threats of Hell-fire; and could not help Mr. Vesey's taking to himself the Quotation of that place in St. Jude, where the Apostle threatens Hell-fire to filthy dreamers, who despise dominion, and speak evil of dignities.

While the Grand Jury were considering of the Bills against Bayard and Hutchins, a Discourse arising between the Chief Justice, the Attorney, and Sollicitor, concerning the Act on which the Prisoners were indicted; the Attorney own'd he had not read it; and being ask'd by the Sollicitor, whether, having a considerable Salary from the Crown, he could not afford to lay out Seven or Eight Shillings for the King's service? he weakly answered, he must maintain himself and Family with it for the King's service; declaring he had receiv'd no Fee in any private Cause, but at his first coming. Within few hours after this, he being overtaken with what he, by a gentle Meiosis call'd a Swimming in his Head, and, as it seems, forgetting what Company he was in, after the Chief Justice had retired, began the Prisoners beaults to one of the Judges: And yet but a little before (a) he had been with the Sollicitor to open the King's Evidence before the Grand Jury, and joined with the Sollicitor in complaining of Four of the Grand Jury, who would not suffer them to go on with the Evidence; and clamourously insisted upon bearing Witnesses for the Prisoners.

Of the Attorney's shameful neglect of the King's business, and Partiality against him.
150 l. per An in England.
70 l. per Ann at New York

These Four being (b) duly discharged for their Misdemeanor, the rest quietly received the Evidence, and all of them came with the Foreman into Court, with *billa vera* endorsed upon each Bill; which was so received, and became a Record without any contradiction. After which, Counsel for the Prisoners desired it might be examined, who of the Grand Jury was for finding the Fact Treason; who against it; pretending that the Number agreeing in that particular, were less than Twelve. Upon this, the Attorney General being urged to speak, though not us'd to say any thing for the King, rightly said, no Averment ought to be received against the Record: And the Foreman as rightly opposed publickly discovering those Counsels, which they had been sworn to keep secret. The Court therefore held it their duty to proceed upon the Indictments; and the Chief Justice, as a Point by the by, far from governing the Case, said, they being but (c) Inquests of Office, the best Authorities were, that a Majority of Thirteen return'd, might have been sufficient; besides in fact, out of Nineteen, Fourteen agreed to the Indorsement; of which, Twelve declared that being satisfied with the Fact, they trusted the King's Counsel for the Law.

(a) Of the Com plaint by the Attorney and, Sollicitor again.

(b) Note, This is one of the Articles against the C. J. Vide ta men to justify this 20 H. 6 33 & Rolls Abr. Tit. Trial f.c.

* Of the first the Indictme.

21 Feb. 1701, Note, their Print owns, that the Gr Jury app

of the Attorney General having so far contributed to the misfortune of the Church Party, thought it time to give back: And therefore his Son, who was improv'd into a counterfeited Sickness, which his wife Southerell for a week or two, to publick shame.

Thus the whole management of the Trials fell upon the Sollicitor-General, who having a large opened the Practices of them who opposed the Revolution there, and the Laws of Trade, their false Print charges him with saying he would stand and fall by the Revolution Party; and having mentioned the too great liberty of the Pulpit in matters of Government, Mr. Treby passionately interrupted him; confirm'd the justness of the Observation by the folly of his defence; and said he understood there was an intention to suspend him, which he hoped for; but was calmly told by the Chief Justice, there were more effectual ways of dealing with Clergymen, who took too great Liberties with a Government: which has been interpreted such a *grave Misdemeanour*, as forc'd him to leave the Province for fear of his Life.

It appear'd in Court, that private Applications by warm Men of the Party, had been made to several in the Pannel of the Petty Jury; and that Bayard the Son, had entreated one of them to appear and be favourable to his Father, who thought himself sure of *Twelve*, most of which had been concern'd in those Papers, and others privately engag'd to acquit him; but both he and Mr. Nicoll, then his Counsel in the Room of young Mr. Atwood, who had never declin'd assisting the Prisoners, seem'd surpriz'd at the plain Authority that the King is not oblig'd to shew his cause of Challenge, till the Pannel is pass'd, and there appear a defect of Jurymen, without those who were challeng'd for the King.

Though *Eighty* were returned, of whom the King's Sollicitor challenged about *Twelve*, Bayard challenged but *Seventeen*, and declared he thought the *Twelve* whom he had chosen to be Men of Conscience.

The Jury finding the Evidence to come up to the Indictment, as the Court did the Indictment to the Act on which he was tryed; a Paper in Arrest of Judgment and other Matters which, of Favour, they had leave to speak to afterwards, being duly considered; Sentence of High-Treason pass'd upon Bayard; wherein the Chief Justice with a Christian Compassion, endeavoured to bring him to a sense of his Guilt, in disowning and endeavouring to subvert the Authority which God had placed over him; and particularly upon the Heinousness of drawing in the Soldier into a seditious Combination against their Commander in chief; and could not but observe it to be great obstinacy in him, not to own this to be any Offence at all. But as Bayard in the account he gives of his own Trial, with the assistance of Famison, endeavours throughout to make the Chief Justice speak little, if any thing tending to the purpose; and yet after their either Dutch or Scotch Dialect; they make him say he was sorry Bayard was so impenitent [of] his Crime.

That the Court was not, as had been suggested in haste to do a Job, but acted with great calmness and deliberation, appears in that, though the Trial began the Second of March, Sentence was not given till the Sixteenth.

Soon after Bayard's Sentence, his Instrument Hutchins was tried for the same Treason, and convicted; upon which he fell so very ill, that several days pass'd before he could be brought up to receive Sentence; which being pronounced, he immediately petition'd for a Reprieve, owning his Offence, and that he had been ensnared, as his Expression was; with which he often in Prison had reproach'd Bayard.

Yet Bayard still continued obstinate, trusting to the large Offers made by his Son to the L. Governor, if he would Reprieve him, without being obliged to confess any Guilt; or else to the daily expectation of the arrival of the Lord Cornbury (with which his Son and others buoy'd him up to prevent his Submission); and if not relieved either of those ways, that he should be help'd to make his escape: and the Party had given him some proof of their resolution to serve him, in cutting down the Gallows on the Common, near a Publick Drinking-house, kept by his Friend, Lieut. Mathews. At last, they thinking his Confession would be a great Blow to the Faction, and finding that he was wiser than to dye for them, resolv'd upon breaking open the inward Door of the Prison, the outward being left open. This was to have been Executed on a Sunday Night, but hapning to be discover'd, a Guard of Soldiers prevented them: which according to his own Apology for his Confession, occasion'd his complying with the reasonable demand, that he, who could not deny the Facts lay'd in the Indictment, should own himself Guilty of an Offence; which after several Equivocations he did fully, and in expressions beyond what was required of him.

The known resolution of the Government, as it drew many to labour not to be thought of the First Rank of Offenders; seem'd to have quieted the most refractory of the Men; but the Womens Tongues were not to be restrained: and such a mortification to that Party having been imputed to the Chief Justice, they publickly threatned, that he should soon be in Bayard's Place, and suffer in his stead. Notice of which being taken, and mention made of a proper cooler for that heat in the Tongue, they took care to triumph over the Ducking-stool as the Men had over the Gallows.

The Sunday after Sentence given against Bayard, some of the Heads of the Party met at the House of hot-headed Tudor, who from a Dancing-Master had been advanced to the Practice of the Law, and to be Register in the Court of Admiralty; there 'twas agreed, or spoken of as a thing certain, That the Judge should be Hang'd when the Lord Cornbury came. And a resolution was taken for those of them who could live abroad, to cross the River the next morning to another Province: and that they might represent the means whereby the Government had been preserv'd, as tending to depopulate the Country, & affording that opportunity transmitted to Mr. Bayard, to

Artic. 29.

*Of the Petty-Jury.
Notice of this
in their Print.*

*Vid. Hales P.
C. p. 259. Cooks
Trial f. 7. per
C. Justice Treby
The Challenges.*

*Of the Con-
viction and
Sentence.
Note, 100
Guineas were
offer'd the C. J.
to procure
an Acquittal
of Judgment.*

Trial, f. 16.

*16 March
1701, 2.
Of their Con-
fessions.*

*Note, Sam.
Bayard told the
Governor,
if he would not
take Money,
one was coming
that would.*

*Vid. De Meyers
Affidavit.*

*Vid. Trial f. 32.
He calls this a
false informa-
tion of Conspira-
tors against his
life.*

*March
101, 2.*

*If a meeting at
Tudor's, and
be flight of the
chief Promoters
the Faktion.*

accused to be prosecuted against them at the approaching Supreme Court, they thus avoided appearing to Informations which the Attorney, who had been duly admonish'd for his neglect of the King's Business, took care to draw: but he shamefully neglected his Duty in the Case of Baker a Tavern-keeper, at whose House the Cabals of the Faction used to be held.

He was presented by the Grand-Jury for these Words of His late Majesty, "King William is but a Dutch King, and a Nose of Wax, and no longer King than we please." Which Present-ment they desired the Court to cause to be put into Form. The Attorney, though order'd to do it, did nothing, nor so much as enquired what Evidence there was for the King; and when he came to open the Information drawn by the Solicitor, shew'd, that he question'd whether the Words could be prov'd, saying, "I must confess the words are of an high Nature, if they can be Proved; and immediately sat down. The Words were sworn positively by a Witness of good Credit, who, as all the Jury declared, they believ'd would not Forswear himself. But one of the Faction, and of so ill Fame, that a Jury even of that Party at the same Court, in effect found him Guilty of Forgery, having placed himself for that purpose, being a Talem-an, through the defects of others, as he went with the rest to consider of a Verdict, took with him a Book of no Authority, which however rightly says, That there must be Two Witnesses in cases of High-Treason. With a false Application of this, he imposed upon his Fellows, to bring in a Verdict not Guilty, because but one Witness. It being discovered, that this his Note, This is Misdemeanor was likely to deprive the King of a Verdict, he, to prevent a Fine justly Threatened, complied with the rest; who all declared, that they had been deceived by the Book, which they obliged him to produce in Court.

Baker's Case
and the Attor-
ney's neglect of
his Duty.

This was one of the supposed Arbitrary proceedings of the Chief Justice, with which Mr. Vesey, and his small Flock of Malecontents, who waited at the Sea-side for the Lord Cornbury's coming, labour'd to create an early Prejudice against the Chief Justice. Yet, if Mr. Vesey was to be credited, they wanted not that opportunity to prepossess his Lordship; that having been done effectually by their Agents in England. And Mr. Vesey being a fit man to be trusted with Secrets, had declared, That they who call themselves the English Party, were at last, through his persuasion, come to a resolution to spare no Money to carry their Points; one of which was to remove the Chief Justice, who he said, had too much Law for the Province.

The Representatives of it, being justly alarm'd with such Rumours, and foreseeing the approaching hazard of the Publick Peace and Tranquility newly settling; thought it necessary, that some Laws should pass, which they suppos'd might be good Fences to their Liberties, till broken through by such Violence, as could not in its own Nature be lasting, or at least, must soon be stopp'd from England.

Of the Assem-
bly's proceeding
after News of
the Lord Corn-
bury's being at
the mouth of
the River.
Note, This is
an Article a-
gainst the C.
Justice.

Finding, that the false Returns of Sheriffs, and divers Artifices, by which Ignorant Men were misled, by a restless Bribing Party, had made them who ever were against the happy Settlement of the Province under the Government and Laws of England, near upon a balance with the Body of the People; the Assembly thought the News of the Lord Cornbury's being at the mouth of the River, ought no more to divert them from adding Four to the Number of Representatives, of which, Two were for the City and County of New York, than the L. Governor ought to forbear the proper acts of his Office, while he expected the publication of the Lord Cornbury's Commission.

It being well known, that the Province would not want Mr. French, and Mr. Wenham, an Act passed, which among other reasonable provisions, Outlaw'd them, unless they should appear within a reasonable time prefix'd, and give such Security for their good Behaviour, as is there required. To avoid incurring Outlawries, though reversible according to the Law of England, they gave the Security required by the Act. The Assembly, to shew their Affection to the Crown, continued the Revenue for Two Years longer than it had been granted: Mr. Champahee, who had done eminent Services for the Province, they continued Agent for Two Years, with 50 l. per Ann. added to his Salary; made Provisions for small Payments to a Minister and Interpreter, very instrumental in converting the Indians; continued the C. Justice's additional Salary for Two Years longer; and provided, that in case he should be sooner remov'd, 140 l. New York Money shall be paid him out of the Treasury there. And His late Majesty having transmitted to the Governor, the Petition of Captain Leisler, Son to him who headed the Revolution, signed Jersey, willing it to be recommended to the Assembly, in pursuance of which, the House of Representatives had, before their former Recess, pass'd an Act for paying the Debts of the Government; this Act pass'd the Assembly in that their last Session.

6. Feb. 1699.

The next day after these and some other Laws were Pass'd, and Publish'd, the Lord Cornbury arrived, with Honan, Dr. Bridges, and other such Candidates for Places; one of which, as the Chief Justice at the same time was inform'd from England, had inveigh'd against him, before any thing of the principal Complaints could have been there, and spoke of his Removal as certain. With them Landed Mr. Livingston, Mr. Vesey, French, Wenham, and Jamison, who, as the Chief Justice soon found, had possessed his Lordship with strange Stories of his Proceedings, and father'd upon him odd Expressions, and such as he never uttered.

Through their management, with Honan, who Acted in all Capacities, the Invitation made his Lordship by the Council, was declined, for one prepared at the Fort; where French, and others, openly appeared Masters of the Feast; but, perhaps, sent their Plate thither only for that day's Ornament, not as a Present.

Of the early
Slight put upon
the Council.

The Chief Justice having some time before been seiz'd with a violent Fever, which, they who knew not his Temper, publickly ascribed to dread of his Lordship's coming; tho he at his Lordship's birth

The Chief Justice having often pressed to know the Instance and Informer; the Words were
 a) N. West. 2. c. 5. then charged upon his Son; and even that soon appeared a malicious Lye of Bayard's. As yet,
 Vid. 1 Rolls f. his Lordship treated the Chief Justice with much Ceremony, but declared he had private Instru-
 31. 1 Mod. f. ctions from some Great Man in England, to enquire into his Judicial Proceedings: and though
 119. 184. 185. he inform'd his Lordship of the (a) Authority of Judgments, and the indemnity of Judges act-
 Rolls Abr. Tit. ing in their Judicial Capacity; his Lordship did not conceal his purpose of assuming a Power to
 18. for case 92. 2. 1. 12 Rep. himself alone over all Judgments; and would not in any thing regard the Authorities in Law
 f. 24. 25. cited by the Chief Justice.
 27 Affise pl. 16. Vaughan f. 138

He not only countenanced the Minister in Preaching against the last Administration as a time
 of Persecution, and crying up his Lordship as a Moses, who delivered them from their Egyptian
 Bondage; but his Lordship after receiving a scandalous Libel, read in Council against former Pro-
 ceedings, would allow of no time for hearing the Chief Justice upon his Memorial; complaining
 of that and such other licentiousnes, as was never before countenanced by any Governor. For
 certain, were it not a thing publick, 'twould hardly be believ'd, that he should so far counte-
 nance Jamison, in calling the Chief Justice (while continuing in the Execution of his Office)
 Villain, as not to suffer Witnesses to be Examined before him to prove this; when at the same
 time he examined Witnesses upon Oath, of what they pretended to have heard a Man say
 to charge the Chief Justice with Bribery; and would take no notice of one Graves's endeavour-
 ing to suborn the Man, nor of the Man's having sworn that he knew nothing of the Matter
 for which they would have had him an Evidence, and declaring the same in Council.

Yet the Chief Justice could not wonder at this, since a little while before, his Lordship had
 taken great Offence at the Chief Justice's Son for contradicting the Secretary in his false and
 malicious Account of the Father's Proceedings; and reproving him for calling the late Earl of
 Bellamont Knave, and that more than once.

Nor could the Chief Justice expect to be better us'd than the L. Governor and Council; whose
 Acts he alone has taken upon him not only to censure, as in the Case of Col. De Peyster and
 Crenger; but wholly to set aside, as in the Cases of Graves and Prideaux; who being inform'd
 against on Oath, for being concerned in an Insurrection against the Authority of the Crown,
 and carrying away the Governor in Chains, were committed, in order to be sent for England;
 but absolutely discharged by his Lordship.

The first open Evidence what Power he was resolved to assume, was upon the Account of
 Hutchins; to whom the Sheriff had, unadvisedly, given liberty to stay some time at his house,
 for the recovery of his health; but the Sheriff understanding, that nothing could secure him
 against an Escape, and that the King's Prisoner might well be taken back, obliged Hutchins,
 much against his will, to return to the Gaol. Of which the Wife having complain'd to his Lord-
 ship, he sent for the Sheriff, and told him, that was the third Complaint he had received
 against him; two of which were, as if there had not been sufficient liberty of access to Bay-
 ard at all times: Upon which the Sheriff going about to justify himself, his Lordship said, "You
 " are very impudent; go your way, I'll hear you no more, get you out of my sight; I com-
 " mand you immediately to set Hutchins at liberty, where you had him, else I'll lay you by the heels.
 Soon after, finding that his Command had not been obeyed, he sent two Files of Musketeers
 to search for the Sheriff; one commanded by Lieutenant Rigg; the other by Lieutenant Oliver:
 The last found him, and carryed him to the Fort, where his Lordship committed him to the
 Guard; and a Centinel attended with a drawn Sword. From thence the Sheriff sent to desire a
 Copy of his Mutimus, but the Return was, that his Lordship said he would give none; and
 after about two hours Confinement, the Sheriff was suffer'd to return to his House.

This was on the Sunday; on the Monday morning the Sheriff was sent for before Col. Smith,
 Prout Affidavit. Col. Schuyler, the Mayor, and Mr. Attorney Broughton: Appearings, he was bid to answer Mrs. Hutchins's Petition, of which he demanded a Copy, but was denied it, and required to answer immediately: Upon which, he having only said, some things were true and others false, they dismiss'd him, without examining any Witness while he was present.

As in such things, his Lordship was for making quick work, a Council being summon'd the
 same morning, he acquainted them that he had referred the Complaint against the Sheriff to
 some of the Council, and another Person, who had made a Report against him; and said, the
 Sheriff had disobeyed his Commands, which no Officer ought to dispute, but he alone was answerable
 for the Legality or Illegality of them.

Then he declared the Sheriff only suspended; the time appointed by the Charter, for consti-
 tuting the New Sheriff not being come; but that he would commit the Office to the Mayor, who
 was Coroner, and that he might execute it by Deputy. Upon which the Chief Justice represent-
 ed the Inconvenience of such a Suspension, for want of the due Execution of Writs, and Cu-
 stody of the Gaol; that he should labour under difficulties in his Office, some Writs being to be
 sign'd by him, which he could not direct to the Coroner, who could act but (a) in special Cas-
 es to be suggested in the Writ; and that the Coroner must execute his place (b) in Person;
 for both which Points he cited express Authorities.

Upon this, his Lordship bid the Chief Justice take care to do his Duty in his Office: But
 he was resolved upon this; and the pliant Attorney said, "his Excellency may appoint what Officers,
 and give them what Authority he pleases."

The Major having taken upon him the Office of Sheriff, by his Lordship's Order in Council,
 without any consent of the Board; the Mayor's pretended Deputy-Coroner Wilson, who had a
 promise to be made Sheriff as soon as the Charter would permit; (from which Office he had

(a) Vid. 22 H.
 6. b. Brock Tit.
 Proces. n. 4
 21 40. 49 63.
 70

Latch f. 563.
 Artescu cap.
 p. 55

Stampf. P.
 p. 51.
 se Attorney's
 attorney Op-
 ion.

And it is not to be supposed, that it was for any private advantage, or from any intention of assuming Power beyond his Commission, that he claim'd the Authority of Chancellor, and to pronounce Decrees contrary to the Sense of the Majority of the Council; though there, as in other English Plantations, they are Sworn to do Justice in the Court of Chancery.

Nor can it be thought that he could have any Profit, by not suffering a Bill to be exhibited in the Exchequer, to oblige Wenbam to account for the large quantity of Elephants Teeth which he had out of the Custom-House; or by stopping Proceedings in that Court against French, barely upon his suggestions in a Petition, never communicated to any of the Judges.

If 1000 l. evidently Forfeited to the Crown, should happen to be lost by this means; doubtless, his Lordship, or the Attorney-General, who wilfully disobey'd Orders of Council for Prosecutions, and delayed this, and Wenbam's, on purpose that his Lordship might stop the course of Justice; will be so generous as to pay the Queen the 1000 l.

Or at least 'tis to be hop'd, they will shew themselves such faithful Subjects to Her Majesty, as to take care it be timely recovered for Her Majesty's use.

And yet what can be expected from the Ministry of the present Secretary of the Province, Honan made Homan, (for whom a Patent under the Broad Seal of England is labour'd) Col. Smith, Dr. Bridgeman, Bayard, Jamison, French, Wenbam, Faukonier, and that Incomparable Statesman the Attorney-General? Can there be Figs from Thorns, or Grapes from Thistles?

It might surely have been thought his Lordship would not have exposed his play to all men, by using that mark'd Card, Honan; whose due Character was to no purpose given his Lordship by the Lords Commissioners for Trade and Plantations, to diswade his Lordship from taking with him such a common Vouchee for Pyrates.

Notwithstanding many extraordinary steps taken for setting up that Party, by which Honan intended to make the chief Profits of his place of private Secretary under a former Governor, they who wished well to the Province, were not much alarm'd, while they thought the freedom of the City, and Legislature of the Province, not likely to be invaded.

But when the Mayor, at the Command or Recommendation of the Governor, summon'd a Common-Council, wherein he, contrary to the Charter, attempted to make a By-Law to give Freedoms to the Soldiers, tho an equal number of the Common-Council was against it, and the Charter provides that all By-Laws shall be made by the greater part of the Common Council; yet he caus'd a pretended By-Law to be entred for that purpose; When no Remedy could be had upon the Petition of the half who oppos'd that Violation of their Charter; when tho the Governor had promis'd the Chief Justice in Council, that nothing should be done in pursuance of that intended By-Law, till the Right were determined; yet by turning out the Recorder Mr. Governor, and putting in the Attorney, who as himself has own'd, voted without sight of the Charter; he got a Majority for making the Soldiers free; When the Mayor and Attorney admitted the Soldiers coming in an hostile manner to the Freedoms of the City; and this was known to be in order to chuse Representatives to a General Assembly, (tho Freedom, without dwelling within the Corporation, gave no such Right): Then, and hardly before, the People were apprehensive of such Extremities, as they had not expected from an English Governor.

The true Subjects to his then Majesty, could not but fear the influence of a Clergyman, who call'd him but a Dutch King, and seem'd to wish his Death: But were surpriz'd to find, that no Prosecution for a Fine could be obtain'd against Baker, who was convicted and fined for saying, King William is but a Dutch King, and a Nose of Wax, and no longer King than we please. And were far from expecting equal Favour with others, when that Revolution, to which, as the opposite Party confess, the People were universally inclined, was call'd by his Lordship a damn'd Rebellion.

Tho his Lordship, who has no mean Talent for fair Speeches, assured the Council, he would take no Characters of Persons but from them, nor would remove any Man till there should be direction from England; it soon appear'd that Honan and others of the Cabinet, prevail'd that all Vacancies, found, or made, should be supplied with the most violent against that Authority which had been executed under King William: Nor could the Objections of the Members of Council in the least avail against his making Col. Willet, First Judge of Common-Pleas, tho inform'd against for going to Mass in Col. Dongan's time, contemning the King's Process, libelling the Assembly, and concealing Pyrates Goods.

That Power which his Lordship took to himself, tho it had render'd the Council and the Chief Justice useless, did not sit so easy, while there was any body in Council who durst to be true to their Trust; which his Lordship said was only to advise, but he was to determine as he should think fit.

He seem'd for a little while to keep to his Resolution declared in Council, Not to remove any from their Offices, till he should receive Orders from England, upon sending thither the Charges against them: But soon assured Col. Smith at his going into the Country, which he communicated to the Party, who spoke of it publickly, That the Chief Justice should be turn'd out or suspended: And indeed, from his first coming, he was treated by them who were in the Secret, as if actually remov'd.

To colour one of the first Promises to the Faction, his Lordship encouraged Articles to be exhibited against the Chief Justice: And Jamison, who had Recourse to his Lordship with Papers, seem'd to have taken his Approbation before-hand.

As soon as they were presented by Wenbam, Jamison, Nicoll, Brandt Schuyler, Noel the Mayor, that false Fellow Young Woolley, and others, who would be thought the Principal Inhabitants of the Place, and Representatives of the People of the Province; his Lordship declar'd. He was

Vid. Affidavit
of this matter.
Of the illegal
forcing the sol-
diers into the
Freedom, to co-
lour their di-
sturbing the Ele-
ctions of Repre-
sentatives.

Of Disaffection
to the King.
Note, His Fa-
ther stood in the
Pillory at Bo-
ston, for saying
in King Willi-
am's Reign, he
knew of no King
but King James.

Of the neglect
of the Council,
and prevalence
of Honan, &c.

The early disclo-
very of the in-
tent to re-
move the C. J.

Of the Articles
against the C. J.

6 June 1702.

As yet, he carried it with much Ceremony to the C. Justice, whom he twice invited to his Table, and accepted of no mean Entertainment from him: Yet that day Sevennight Col. Smith being return'd to Town, his Lordship call'd a Council; where, without any thing previous, he immediately upon the C. Justice's coming in, pronounced a Sentence of Suspension prepared in Writing; and that in the Name of King William, (his Death not having been formally notified); notwithstanding that his Lordship having no Power to determine the Commission, it was in full force by the Act continuing those Offices in which men were duly invested at the Demise of the King; and Her Majesty's Proclamation sent him from Boston, continuing such Offices, till Her Pleasure declared to the contrary.

Barely upon Articles which the C. Justice had no time allowed to answer, his Lordship did this, declaring he was satisfied the C. Justice had behaved himself corruptly in his Offices. Then and not before, his Lordship gave the C. Justice a Copy of the Articles; every one of which as he could have immediately shewn, either misrepresented known Fact, or where they were right in the Fact, grossly mistook the Law. The chief Grounds on which they are founded are accounted for in this Narrative, and all of them shall in due time be set in a true Light. They being compos'd by Bayard and Jamison, with some help to dress them in an English Style 'tis no wonder that the most innocent things are represented as Crimes. Thus the C. Justice is charg'd with corruptly giving an Opinion, which, if wrong, affected not the Case in question. Taking notice of Mr. Vesey's using the Liberty of the Pulpit, for a cloak to malice, is represented as proceeding from Spleen against the Protestant Religion by Law established, and a Design to eradicate the beginnings of a Settlement thereof in that City; The Legal Methods by which he disappointed all the Contrivances of the Party, to help Bayard to escape the hands of the Law, they impute to Malice; And his Endeavours to suppress Illegal Trade, and all Attempts against the English Government and Laws, to Oppression: And what he was never before charg'd with Avarice; which 'tis well known might have been encouraged and largely supplied, if he had not strictly observ'd his Duty, and preferred the Interest of his King and Country, before his private Gain.

Sup. That a Grand Jury is but an Inquest of Office, &c.

Art. 29.

Vid. Artic. 31.

Of Examinations after the Suspension, to support the Articles against the C. J.

Vid. Van Hock's Affidavit, taken 7. Octob. 1702, of his being examined about a Month before.

Of the turning five in one day out of the Council.

Prout Min of Council, 9 June. Capt. Walters's Affidavit, 6. Octob. 1702.

Of a Breach of the Instructions, in adding two to the Council.

Of the supplying Offices upon Suspensions.

Breach of Stat. 7 & 8. W. 2.

Of the arbitrary disposal of Capt. Vetch's forfeited Ship.

** Note, This he ought not to do, being above the value of 10 l.*

Of unwarrantable proceedings against Mr. Weaver.

The Lord Cornbury, however, was easily satisfied, that the C. Justice was guilty of Corruption. But to colour this easiness of belief, after he had pronounced a Suspension, which might have been thought grounded on Evidence precedent, the Mayor and Attorney, by his Lordship's Order, published a Siquis to confirm the Articles, and summoned several before them at time greatly distant. How these two, who have been the C. Justice's Enemies, for freely telling them their Duties, may have prevail'd on some ignorant People, and strain'd or misrepresented the Sense of others, by such Art as they could use in penning Affidavits, the C. Justice cannot tell; having, to no purpose, applied where he conceived it most proper, for Copies of all Papers against him.

The same day that the C. Justice was suspended, the Lord Cornbury resolv'd to have the Council, without the Consent of which he cannot dispose of the Publick Revenue, to be at his Command; and to that end turned out, not only the C. Justice, who stood first of the Council in his Lordship's own Instructions, but Four more; and as to Three of them alledged only Generals; declaring, he would render his Majesty the particular Reasons, and deliver them Copies of the same: Which one of them has often demanded, but could never obtain. And in this manner all of them are deprived of means of making their Defence.

Five being thus turned out of the Council in a day, tho Seven still remained, in which case by his Instructions he is to add no more without Order; he, to secure the more certain Command there, put in Two; of which, one is Dr. Bridges, whose Character need not be given where he is known better than at New York: And yet Magistracy makes a speedy discovery of the Little Man.

Among those who were suspended from the Council, Three, besides the Chief Justice, were from particular Offices: Mr. Weaver from that of Receiver of his Majesty's Revenue, and Collector of the Customs; and Col. De Peyster and Capt. Walters, from that of Judges in the Supreme Court.

That Court his Lordship supplied with the former C. Justice, who had for good Cause been remov'd, and Dr. Bridges. Into Mr. Weaver's place he put Three, one of which is Wenham the other a French Bankrupt, Faukonier, incapable of the Office by the express words of an Act of Parliament, to the observation of which his Lordship is sworn, and every Breach is a Forfeiture of his Government.

Mr. Weaver being turn'd out the very day he was to have sold a Ship of Captain Vetches, adjudged forfeited; his Lordship, upon Terms agreed on with the Captain, return'd him the Ship; whereby he was enabled to carry on his old Illegal Trade with the French at Quebec: In doing which, besides his * Majesty's Share, his Lordship arbitrarily disposed of the Properties of Captain Nanfan, and Mr. Weaver the Informer.

The same day, his Lordship, without any demand of further Security than what had before been given, caused him to be Arrested in an Action of 2000 l. as due to his Majesty; and the Process was executed in the Night-time by the Deputy-Coroner, assisted with Twenty or Thirty Soldiers commanded by Two Lieutenants, Matthews and Riggs.

Some days after this, all Mr. Weaver's Goods and Papers were seiz'd; nor were the Goods suffer'd to be returned, till full Security was given for the excessive Value at which they were apprais'd, without Oath; but his private Papers are still kept from him, tho he has made Oath that none of the Publick were then in his Custody or Power.

Absolute a Governor; and knowing that his regard to the Laws would be rewarded with Law's Violence, cross'd the River to East-Jersey, within his Admiralty Commission. While he was there, he was visited by Mr. Weaver, who had the good fortune to get away, tho' all places through which he was to pass, were guarded by Soldiers.

From him, and others, the C. Justice knew with certainty, that Captain Walters, one of the Commissioners of Oyer and Terminer, before whom Bayard was Tried, was, notwithstanding Bayard's Attaindure, arrested at the Suit of this Man dead in Law, in an Action of 10000 l. and imprison'd in the common Gaol, till he thought fit to give Bail. That the like Action was commenced against Col. De Peyster; and some of the Grand Jury were arrested in Actions of 5000 l. each. That Young Mr. Atwood was by Dr. Bridges denied so much as a Summons, for Bayard to shew his Cause of Action against one of the Grand Jury Men; and that the Dr. denied the like, requested by another Practiser of the Law, in the Case of the late L. Governor, who was arrested in two Actions of 2500 l. each, at the Suits of Graves and Prdeaux: And that they had brought Actions of 1500 l. each, against every one of the Council who committed them.

Mr. Weaver having absented himself, after he had, as he thought, given sufficient Security to answer the Crown, and left Effects to Indemnify his Sureties; severe Proclamations issued out against him, as if he had run away with a large Sum of the King's Money, and a Price was put upon his Head. However, it being thought, that he had Money in his Hands to answer the Cravings of an hungry Government; the Lord Cornbury caus'd Assurance to be conveyed to him of Protection from private Suits, while he should be passing his Accounts with the Deputy Auditor: upon this Assurance he returned to New York, where having settled his Accounts, he immediately withdrew from the Fury of an Enraged Party.

The Governor being intent upon gratifying them in all their Demands, and seconding their Heat, turn'd Col. De Peyster, and all the Captains, of which, Two had been of the Council in his Lordship's time, out of the Militia; made Peartree an old Master of a Sloop newly come from Jamaica, Colonel, (which as was generally reported, he Merited, for advancing 800 l. upon the Security of the heads of the Party, to carry on their Cause); and a Frenchman, with some disorderly Dutch and Englishmen, he made Captains.

While the Faction thus reign'd at New York, Mr. Atwood and Mr. Weaver, found it necessary to hasten for England; and knowing that the Governor would suffer no Merchant Ships, but what belong'd to that Party, to go thither, under pretence, that they must stay for a Convoy, the departure of which, his Lordship's Humour made very uncertain; resolv'd upon making to Virginia, where they hoped to be time enough to have Passage in one of the Convoys to the great Fleet going from thence.

In their way thither, being by contrary Winds kept longer than ordinary in an Inlet of the Sea, they were likely to have been surpriz'd by a Vessel from New York, with Forty Armed Men, who had Orders to carry them back Dead or Alive: of Executing which Arbitrary Command, they miss'd but 5 days.

At Virginia, they finding themselves too late for the Fleet, took their Passage for England in a leaky Merchantman, of which they never heard since. But as they were just out of the Capes, to their extraordinary good Fortune, the Master was summon'd to go Aboard the Centurion Man of War, by that worthy Gentleman Captain Hern; whose kind Usage of them is ever to be acknowledg'd.

Before they left those Parts, a scandalous Libel was Printed against the C. Justice at New York, where Bayard and Jamison corrected the Pres. The Title it first had, was, An Account of the illegal Prosecution and Trial of Col. Nicholas Bayard; the partiality of which Title was too gross to pass in England. And therefore now they dress it out more speciously, that it may look as if 'twere Printed by leave of the C. Justice; which since they could not pretend for a mere Libel, they procure a License from the Lord Cornbury, dated as of the 15th of June; tho' in truth, the Printer has declared he had no License: However, this is not the least Invasion of the Office of the C. Justice; nor was it ever before known, that a Condemned Trayter had from one who was not at the Tryal, leave to represent his Case as favourably for himself as he could, and to impose it upon the Publick with a Face of Authority: neither did ever any Governor before the Lord Cornbury, assume a Right to examine Witnesses after their Evidence did transire in rem judicatum; and by the Construction of the Law is to be taken as the Jury found it.

Tis not within the intent of this short Narrative, to shew all the Falshoods, Contradictions, and Absurdities of that Spurious Tryal, which may soon be expos'd more fully: Yet this need not be much labour'd, since, in its own Nature, the Printed Account ought to have no more Credit than the Publisher, who can be no Jury-man or Witness in any Cause, for want of Legal Credit; besides that honester men are too apt to make the best of their own Cases.

The very Preface says it comprehends but the Substance of what passed; so that there not being the C. Justice's Words, nor yet the Witnesses, or the Prisoners, 'tis evident they are turn'd to the Sense which Bayard and Jamison put on them.

Yet in this matter there's Contradiction upon Contradiction: the Title Page says, The taking the Tryal was strictly prohibited; the Preface will have it, that there were no Notes but what were taken privately unknown to the Court: but the 25th Article against the C. Justice, from the same hands, charges him, That, to cover the inquiry of the Prosecution and Proceedings, he positively forbade the taking in writing any Notes or Memorials of those Tryals. Notwithstanding their Charge, as if Notes were universally Prohibited, yet according to their own account of the Tryal, the C. Justice took Notes.

Of the extravagant Actions brought by Bayard.

Vid. The Captain's Affair.

Of Mr. Weaver.

Of altering the City Militia.

Of going for England by the way of Virginia.

Note. While he detain'd the other Ships, he suffer'd one of Delancie's to go with Bayard's Passants.

Of an Escape from an intended plain Assassination.

Of the Libel against the C. J. licensed by his Lordship.

Some Observations upon the printed Account

F. 11.

F. 11.

thinking other Mens memories as bad as their own, when they come to the Evidences, they pretend to give them word for word, as they were taken in open Court. But as there is a fatality against the passing of their Inventions for Truth; they add, and since agreed unto by all of them respectively.

Where it appears, that the Witnesses were in their power, and their Evidence, since, cook'd up as much as may be, to favour the Party convicted upon the Evidence given in Court; not such as Bayard at full liberty, could procure them to affirm without Oath, or upon any Oath administred without Authority. The Tryal even as they Print it, plainly evinces, that the Witnesses had been tamper'd with since their being examined, while the matters were fresh still in their memories: The obvious endeavours of some of them to retract what they appear'd to have sworn, would not pass upon the Jury; and however, 'twere easy to evince that in many Particulars, they swore more fully at the Trial, and otherwise than is in the Print: Nor was there any real question among the Lawyers; but the Overt-Acts laid in the Indictment, were fully proved, and the Jury were abundantly convinced, that the Libels contain'd the Expressions set forth in the Indictment; and that there were more Expressions, whereby Bayard in Conspiracy with others, incited the People to cast off the Government; since being ask'd by the Foreman whether he would produce the Papers, he pretended he could not. Which 'tis evident he would have done, if they had not contain'd what was sworn by the Witnesses. But if what they now pretend to have been the true Papers, contradict what was sworn; either he was justly convicted through his own obstinacy, in refusing to produce what might have clear'd him, or which is most probable, the Print in this as in many other particulars, would obtrude falsehoods upon the World: For Instance; Bayard in the Account he gives of the Evidence from his own Notes, acknowledges Claus swore that the "Assembly had given a Gift to the L" "Governor, to tempt him to pass their Acts, and another to the Judge; and that [thereby] his "Majesty's Government was like to be rendred vile and cheap in the eyes of the People.

Tryal f. 24.

Vid. f. 27.

But the Address which they publish for true, mentioning particulars, with which it blackens the Government under the late Earl of Bellomont, adds, "with many other sinister, indecent, and unjust Proceedings, easily to be proved, but too many to enumerate at present "to your Majesty; [thereby] greatly offending your Majesty's good Subjects, and tending to render your Majesty's Government in these Parts, scandalous, vile, and cheap, in the eyes of the People.

And all there, which can be thought to look towards the following Administration is no more than this;

"Altho these Methods had, long since, been determined, if they had not lately met with new Supports.

In which, there's no direct Charge against any body.

Who then can think, that if their Printed Account be true, this Petition would not have been produced at the Trial to encounter the Witnesses? Were it supposable that Bayard had not the power over the Papers; can it be thought his own Party would have so given him up by depriving him of such Evidence?

Not to urge the gross Falshoods in the Print, making Mr. Weaver say he was of the Leislerian Party, and would stand and fall by it; The Chief Justice not only often to express himself very improperly, as if he followed Jamison's Scotch, or Bayard's Dutch Dialect; but so impertinently, as to talk to one matter, when another is in question, to which they will not allow him to have spoken one word: 'Twould be too tedious here fully to expose the Partiality of their Omissions; but it may be observ'd as a Specimen.

1. That though the Chief Justice's Son was of Counsel for the Prisoner both before Conviction and after, and urged Matters for him as fit to be observ'd as the Arguments of others since improved; no notice is taken of any thing said by him,

2. The Print wholly omits the Arraignment upon the Indictment before the Tryal, that the Objection suppos'd to be of weight, upon the Grand Jury's not being return'd by Precept, may be thought to have come in time,

3. The Print omits the reading in Court an Affidavit, proving that Fourteen of the Grand Jury agreed in finding the Bill; and that Vanderspeigle, who was against it, declared Fourteen did agree: According to one of their Articles, the Tryal was then appointed, viz. when the Motion was made; but by their omitting this, they make the Chief Justice's ordering a Minute, That it did appear to the Court that the Bill was found by more than Twelve, seem arbitrary.

4. Tho by their Preface they would have it thought that nothing material which pass'd at the Tryal is omitted, but the Elaborate Discourses, as they, perhaps, jestingly call them, of Mr. Weaver, previous to the Tryal, and of Mr. Atwood in his Charge to the Grand and Petty Juries; more Elaborate Answers were known to have been given to the seeming Authorities cited by the Counsel, and to the shew of Reason in their Arguments, which were far inferior at the Tryal, than what they are advanced to in the Print; where they have the advantage of appearing as unanswerable, because the Publisher is not so just as to mention any thing said by the Court, which he represents as Arbitrarily over-ruling the Reasons offer'd by his Counsel: But fairly to have publish'd the Grounds for such over-ruling, would not have answer'd the end of the Two Editions of their Account; the First of which avows the Design of representing the Proceedings illegal.

5. Whereas the Chief Justice spoke to Three Points offer'd in Arrest of Judgment; and gave distinct Answer to every seeming Authority urged by the Prisoner's Counsel; citing such as

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Tho this Objection is now dropt, 'tis one of the Articles against the Chief Justice, which the Lord Cornbury supposes to be fully proved, and as is to be thought, the principal Ground for his letting Bayard and Hutchins out of Prison, and suffering Bayard to bring Actions against Judges and Grand Jury-men.

6. That they may load the Chief Justice, as acting without the consent of the two other Judges in Commission with him, they in the Print, say, *no Answer was given* to the Prisoner's Request, that they would declare whether they agreed the Matters against him to be Treason: When it is well known, that they expressed their agreement in that Point with the Chief Ju-
F. 14.

7. Whereas after they have brought in Mr. Emmet as the only Lawyer that argued upon Two other Points; upon which Counsel was indulged the liberty of speaking, after they might have been concluded by the Paper in the Arrest of Judgment: 'Tis well known Young Mr. Atwood argued those Points more largely; but as they make no mention of him, neither do they of any one Authority to the contrary, cited by the Chief Justice, tho he cited many; and the Copy of his Argument upon those Heads, is now to be seen, notwithstanding the loss of most of his Papers, by his Son's being taken by the French.

8. Whereas in the Print, they pretend to give the Evidences in the Witnesses own Words, as they were taken in open Court, and since agreed unto by all of them respectively, among whom they name Hugh Grey; and will have it, that upon being ask'd whether he remembred any Complaints against the Government in the Addresses, he should only answer *no*; with which they conclude his Testimony. 'Tis true in fact, and therefore not urged barely upon the credit of what Honan certifies to have been afterwards sworn by him, that there was a discourse between the Chief Justice and him upon the mention of *Illegal Proceedings*; which he, upon his Oath, artfully turned to the Practices of the Traders there.

The shameful Tergiversations of the Witnesses, and backwardness to own what at last came out, with the Account of what they who had been examined before the Council had worn before they were tamper'd with; having fully convinc'd the Jury of the Truth of the facts laid in the Indictments: To observe the particulars, would be to countenance such Examinations of the Grounds of their Verdicts, as are a manifest violation of the Privileges of Juries, who in criminal Cases are not liable to any Attaint.

But the World may judge, what Credit ought to be given to an Account of Law and Fact, contrived by the Prisoner and his Counsel, with the help of the whole Party, to make the Proceedings look like a Conspiracy of Blood-thirsty Men, against the Life of a quiet innocent Man; and since Reformed by a Candidate here for the C. Justice's Place; as if Buckingham-Court could supply Evidence of what passed at New York.

Whatever is now pretended, all the Objections against the Proof of Fact, urged by Mr. Nicol, and manifestly given up by Mr. Emmet, was, as if Bayard's own signing the Papers was prov'd only by the similitude of Hands; tho that differed from the Cases cited, because, they were Papers in his own Custody, and by himself produced to the Witnesses, for them to follow his example; which with the Accounts of the Titles and Contents, as produced at the several Places, removed the other, as if it did not appear, that all who Signed more than Rolls or Lists of Names, sign'd the same Papers.

'Tis certain, the Counsel urged nothing against Bayard's being Chargeable with what his Instrument Hutchins did, in procuring Soldiers to Sign at his house.

As Mr. Emmet put it, the only Question was concerning the Law arising out of the Fact; but then he falsely insinuates, as if the Court, or the King's Counsel had declared, That if the Jury found the Fact, they were to have no regard to matter of Law.

He further plainly admits the Fact, which was proved to be High-Treason within the Act on which Bayard was tried; but argues, as he thinks very strongly, That no Act or Thing can be made Treason in the Foreign Plantations, but such only as are enumerated in the Stat. 25 E. 3. and what is to be gathered out of the words of the Act only, without any forced Interpretation: Whereas, as had been observed by the Court, Matters have been adjudged Treason within that Statute, which are not there *enumerated*: for Instance, all Evidences of a Design to Depose the King, or divest him of his Regal Power; so a Rising upon any publick Account, though it may but by a remote Construction be thought a Rising against the King, is a levying War.

As the Statute 25 E. 3. refers Common Law Treasons to the Declarations of Parliaments; to deny, that the General Assemblies in the Plantations have the like effect, in relation to the Parties, who by their Representatives consent to those Laws, is to deny that unquestioned Prerogative of the Crown; by which, as the Chief Justice rightly observ'd, but is misrepresented in their Print, the Plantations are govern'd more than England is. And thus, tho Ireland is govern'd by the Laws of England, some things are Treason there which are not here.

Besides, the Act 25 E. 3. plainly refers to those Adjournments of Causes which us'd to be from the Courts of Westminster-Hall into the Parliament, propter difficultatem, which cannot be thought intended for parts so remote.

Mr. Nicoll objected in this matter, as was observ'd at the beginning; and besides the Points of Law already accounted for,

1. Young Mr. Atwood, tho not honour'd with their owning him in it, objected against one of the Grand Jurymen as partial for the King! But they untruly say, Some of them were ob-
F. 6.
jected against. This was overruled by the express Authority of Stamford, this being an In-

Cook's Trial. f. 13. ry, but the King's Writ is sufficient for the Grand Jury: And Chief Justice Tracy would no
Vid. Hales P. C. say but it might be for the Petty Jury. Besides, if there had been Weight in the Objection,
202. Fitz Abr. came too late, being after the Party had pleaded to the Indictment.
Tit. Cor. n. 89.

Trin. 9. H. 5. 3. Mr. Nicol urged that the Prisoner is not in the Indictment directly charged with any Fact except his own Signing, but for Endeavours: Which is the governing Word used in the Act on which he was Tryed: Besides, it is charg'd, that the Soldiers and others signed by his procurement; and that he purposing, designing, conspiring, and endeavouring with others to do fame, subvert, and alter the Government, and to disturb its peace, good, and quiet, did truly use divers indirect Practices and Endeavours to procure Mutiny and Sedition among the Soldiers, and did draw in Numbers of them and others to sign the false and scandalous Libels part of the Contents whereof is there set forth: Which said Libels were by his procurement signed by the said Soldiers, and others.

This was more than an Endeavour to procure Mutiny and Sedition, being a manifest drawing them into Sedition, and fully comes up to the Treason within the Act, especially it being laid that Bayard had by the malicious Scandals in the Indictment, incited the Subjects to disown the present Authority and Government of the Province; and to cast off their Obedience to his Majesty's said Government.

Attorney General Sir E. N.'s Opinion. Nor need this Point be labour'd, since Her Majesty's Attorney General, Sir Edward North, being by the Lords Commissioners for Trade and Plantations, required to give his Opinion Whether the Warrant for committing Bayard be Legal; and whether the Crimes charg'd of him amount to High Treason, within the meaning of that Act of Assembly? Returning That he had perus'd the Warrant, and the Act; and is of Opinion, That the Warrant is sufficient in Form to charge Bayard with High Treason within that Act; and that there is as much certainty of the Nature of the Crime charg'd, as is necessary in Warrants of Commitment but that there must be much greater Certainty in the Indictment; which he had not then seen. Since therefore, as may appear by the Account above, of the Fact which was proved, the Proof came up to what was charged in the Warrant; if it were admitted that the Indictment had not sufficient Certainty, the want of which cannot be shewn; however, an Error Judgment upon Nicety of Law, when the Man was guilty of High Treason, can be no cause of censuring the Judges.

F. 22. 4. They represent it as objected in Arrest of Judgment, That one of the Petty Jury was an Alien; tho in truth, no such Objection was made in Court as to any one of the Petty Jurors; and if it had, would have been manifestly too late, when the Challenges were over. Indeed when it was likewise too late, an Objection had been made, as if one of the Grand Jury was an Alien; which if true, should have been urged before he had pleaded to the Indictment but could not be enquired into afterwards.

Vid. Hales P. C. p. 202. 5. One of the two Points moved in Arrest of Judgment, after what was offered in Paper had been over-ruled, and which were argued by Young Mr. Atwood and Mr. Emmet, was upon the Venues being from the Neighbourhood of the City. As to this, Young Mr. Atwood is supposed to have been silent, as well as his Father; who shew'd that Arundel's Castle, the most specious (*a*) *Cr. Cor. f. 164, 165. A-dams v. Hicks.* any cited by Mr. Emmet, does not (*a*) reach to a City; and as to Stamford, cited by his Son (*b*) *Cr. Jac. f. 308. Glison v. Procter.* where Stamford relying on the Year-Book, 8. H. 5. says, if the Vill. be a City, *de vicina* shall be left out; he shew'd (*b*) the contrary to have been often since resolv'd, and the Book 8. H. 5. not to be Law.

Jb. f. 493. Walter v. Mansell. 6. The other Point, on which they stifle the Son's Argument, adding all to Mr. Emmet was upon the Precept's not being indors'd by the Sheriff: Upon which the Chief Justice shew'd,

Stiles f. 2. Knight's c. 2 Rolls f. 209. 210. Nelverton f. 110. (1.) That if 'twere Error, it was observed too soon, and might be amended at any time sitting the Court, before Judgment given; citing several Authorities supporting Justice Charnberlain, who says, The Judges will require the Name of the Sheriff to be subscribed before Judgment given, tho it was omitted at the time of the Return. And Nelverton, reporting the Case of Holdsworth, on which the Prisoner's Counsel relied; where the Court held, That having been in Court the same Term, the Court might call in the Sheriff to amend it, before the Verdict pass'd, or since in the same Term.

12. E. 2. c. 5. 2 Rolls f. 210. Bethel & Parry. Cr. Cor. f. 351. Wickham & al. v. Enfield & Ux. (2.) That the best Authorities were, That a Writ of *Venire* was not void for want of a Indorsement; but that the Sheriff was to be amerced; and that only by the Statute of York, and the want of it not amendable, a Precept (*a*) from Commissioners of Oyer and Terminer is not within the Statute, and consequently not at all needful; for that (*b*) before the Statute, Writs were good without such Indorsement, and other Returns into Courts are good since the Statute without the Officers Names.

(a) Vid. Cook's Trial p. 13. (b) Brook J. R. Return de brief n. 81. 41. Affise Pl. 29. 41. E. 3. All the Authorities in the Margin, and more, having been cited by the Chief Justice by way of Illustration; if any thing of Fairness had been intended by the Publishers of the Sham Account, they would certainly have taken from the Sollicitors and Practisers, who all have liberty to take Notes, at least the References, which they could not all omit taking: 'Tis well known they might have been supplied from Bickley, who by the Chief Justice's Favour was admitted to Practise, without any Letter or Certificate mentioning his Qualification: Nor was he ever reproved by the Chief Justice, to whose Table he had been welcome, till he had been very insolent for his Client Baker, in that plain Party-Cause; in which, as since appears, he was as much engag'd out of Faction, as for his Fee; he being one of them that join with

Proffer of Assistance of Force, to relieve them from their Oppressions, and prevent the Execution of the two Prisoners.

This Force, 'tis not unknown, was sollicited by Mr. Livingston, whose Son married the Daughter of Col. Wmrop, Governor of Connecticut; and in the Colonel's Sickness he procured a Threatning Letter to be writ the L. Governor, from the Colonel's Deputy.

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Province.

The knowledge of these Practices shew'd the necessity of executing the Law, unless Bayard would render himself a fit Object of his Majesty's Mercy; which he seemed to do, after the expectation of timely Relief by the Lord Cornbury's coming, or by such means as the Party proposed, proved vain. But that Catastrophe has made him forget his former Thoughts, and forces him to apologize, for owning the drawing in the Soldiers into a Conspiracy against King William's Government, any Offence whatsoever.

And since he has had the Lord Cornbury's Countenance and Leave, not only to blacken the Chief Justice in such an Account of the Tryal as might make most in Favour of the Prisoners, but to load the Judges who staid behind, with Actions of 10000 l. apiece for acting as Judges; that, with the other Enormities now licensed there, were a sufficient Warrant for the Chief Justice to withdraw, when he was deprived of all Opportunities of serving the Crown in his Station.

As soon as he arrived in England, whither the Storms of that Government had driven him, he applied himself to the Lords Commissioners for Trade and Plantations, for some effect of that Protection of which their Lordships had assured him in the discharge of his Duty, after they had declared themselves "well pleased with what he had writ of his Care in the Affairs of the Province, and with the Testimony he had had thereof in the additional Salary of 70 l. per Ann. made him by the Assembly: declaring further, "That what he had done for preventing the Mischiefs which threatened the Peace of the City, from the discontents rais'd upon the Return of Aldermen and Assistants, was very acceptable to their Lordships; who ordered their Secretary to assure him, that he could not do a greater Service, than in contributing his endeavours towards the reconciling all Differences, and preventing the Mischiefs that may arise from thence. And they therefore desired him to continue that Care on all Occasions.

Letter from
their Secretary,
29. Jan. 1702.

And as a means to keep under the most obstinate Opposers of the King's Authority, they recommended the prosecuting with Vigor, the Insolence of the Men of Suffolk-County who had disobeyed the King's Writ for Electing Representatives.

This was a great Encouragement to him in the faithful discharge of his Duty; and being upon that very account, as he was always ready to make appear, suspended from his Offices, he could not in the least question, but their Lordships would receive his Complaint against the Lord Cornbury, for suspending him; or hear those direct Answers which he proffer'd to the pretended grounds for it; which their Lordships deferr'd till they should hear directly from the Lord Cornbury, with intention as was presumed to hear him then.

The Papers being come, he put in a Memorial for Copies; but several days after was told, the Lord Nottingham had sent for them on the Thursday or Friday; and on the Saturday following, Mr. Atwood received a Summons to attend the Committee of Appeals the next Tuesday, without any mention of the Occasion.

When he came there, he found that Bayard, instead of Petitioning Her Majesty for a Pardon, or Leave to bring a Writ of Error, had arraign'd his Judges, and would have one of them and the King's Sollicitor, to answer as Criminals; but his Agent being put to shew, that no Writ of Error would lie as, it apparently did, this Appeal was dropt; and they procured the bringing before her Majesty in Council, the Lord Cornbury's Reasons for Suspending him, and Four others of the Council at New York.

By this means he found, to his great Surprize, that their Lordships who gave him hopes of an Hearing before them, upon the coming of the Lord Cornbury's Papers, without any Hearing, approved of his being Suspended from the Council for Misbehaviour, and divers Irregular and Illegal Proceedings in Government; and represented it as fit, that they should be displaced.

Yet so great was Her Majesty's Goodness and Justice, that She appointed him to be heard by his Counsel, and directed him to make Application to the Lords Commissioners for Trade and Plantations, for such Papers transmitted by my Lord Cornbury as may be proper for his Information. With this Order he was not serv'd till the 11th of January; but before had Notice from One of the Clerks of the Council, that he might have Copies of such Papers as concerned him. Upon this he attended their Lordships with a Memorial, taking notice of the Hardship upon him, to have been twice Condemned unheard; and pressing for Copies of all Affidavits against him, or leave to take Notes out of them; which was then deny'd, unless the Attorney-General, or one of the Secretaries would express a Consent under one of their Hands. Missing the Attorney, he purposed to Petition Her Majesty, without further Application to their Lordships; but they requiring his Attendance, proffer'd him the Copies, if he would allow the Papers of which he should take the Copies, to be Evidence; and then the Secret came out, That in truth, they had nothing which can Legally warrant any Censure upon him: The Lord Cornbury having made no Certificate himself, but only that Man of Fame HONAN; and Honan is such a common Vouchee for Affidavit-Men, as he had been for Pyrates; no Original Affidavits appearing, but only supposed Copies attested by him.

31. Decemb.
1702.

11. Jan. 1703.

12. Jan. 1703.

Thus impotent has Malice hitherto been; yet still the Agent threatens some mighty dormant

Evidences, the Scarcity of which will oblige him to sue for a Trial.

22. Rep. f.
24. Oct. 25.

As to any matter pretended against the said Chief Justice, tho' it has been resolved, That a Judge was not to Answer even in the Star-Chamber, while its Authority lasted, for what he did as a Judge; yet he is very desirous, that all the Circumstances may be heard before Her Majesty; who, he is fully satisfied, will not suffer Calamours from a Party, who have been us'd to exclaim against all Prosecutions of Pyrates, illegal Traders, and other Violators of the Laws, to pass for Proof. I signe to witnesseth.

Yet much Noise and Rumor industriously spread by Malefactors, and those whom they have hired for that end; has occasioned all the Hardships which the Chief Justice has lain under, next to a Resolution in the Governor, to get rid of one who durst urge the Law against lawless Proceedings; some of which have been already touchid on, having hapned while the Chief Justice continued in the Province; since which, further Accounts have come of other Matters, agreeing with the first steps taken in his Lordship's Administration. As,

1. That in order to detain the Countess of Bellamont and Captain Nanson, and if possible to stiffe their just Complaints; his Lordship not only caused them to be charged with extravagant Actions upon pretended Debts to the Soldiers; requiring the Lady, tho' an Executive to give Special Bail; but after both had given Bail, positively under his Hand ordered the Captain of the Man of War, and the Masters of the Merchants Vessels going for England, not to receive either of them on Board; and the Learned Attorney General, thinking Arbitrarily Power might be delegated to him, signed one such Order in his Lordship's absence.

2. The Debt of the Government is increas'd near 2000 £ in one Particular, greatly detrimental to the Province, besides the likelihood of a total Stop of all Payments, except the supplying the occasions of the present Administration.

3. That the Five Nations of Warlike Indians, who were always on our side against the French, and without Advice from whom, we can know nothing of the Enemies Motions, are in effect, with all the Arms they have had from us, given up to the French, in being allowed to stand neuter: Whereby the French have opportunities of working upon them to their purposes, while the Indians in the French Interest, are at liberty to joyn in attacking us, provided they offer no hostilities against those Five Nations.

4. In consequence of which Neutrality, the Mobaques bordering upon the Massachusetts Colony, resolve to stand neuter, tho' One Hundred French Indians are actually in motion, from whom hostilities are daily expected.

5. As the Soldiers of the Garrison at New York were by a plain force brought into the Freedom of the City, so they have been carried into the Field, to vote for the Choice of Representatives, and disturb the Freedom of Elections.

6. Even the Soldiers who were sent into the Field in a Body, under their Officer, Lieutenant Riggs, were themselves under a force in relation to their voting, the Officer declaring, they should vote as he pleas'd, and forcing back some who went to that side which he came to oppose.

7. Tho' by a late Act of Assembly not then repeal'd or disallow'd, the City and County of New York were to send Six Representatives to the General Assembly, his Lordship ordered Writs to issue but for Four; taking to himself Power to set aside Acts of Assembly.

8. Tho' he seems to disown the Authority of that Assembly, at least, at the time when the last Acts pass'd; he has raised Taxes by colour of one of those Acts, and applied them to other Ends, than those to which the Act had appropriated them.

9. That, as it were on purpose to secure acceptable Returns, he made Wilson Sheriff, noted for foul Practices in that particular. And Wilson, to keep to his Character, without the consent of the Candidates, and contrary to the Law of the Province, adjourned the Poll from the Field, to a private House, where he unduely declared a pretended Election, without taking the Names of them who offered to Poll on the other side.

10. His Lordship has taken upon him to disallow Legal Vouchers, without the personal appearance of the Receiver of the Revenue; by means whereof, the Estates of his Sureties may be torn in pieces before Orders can come from England to relieve them; and the like he may do in the Case of the Countess of Bellamont.

11. As most of the Calamities under which that Province groans, according to the Lord Bellamont's Letters, with the plain Evidences sent by him to the Lords Commissioners for Trade and Plantations, are owing to the Management of Bayard, Colonel Smith, Mr. Nicoll, and Honan, with such as they admit to their Cabals; all honest Men there, dread the Consequences of Bayard's being permitted to seek his Malice upon the Judges and Jury-men, who brought him to a necessity of confessing his Offence against God and the King; or being Martyr to his oblligate Ambition of containing the Head of a Faction; and of Col. Smith's being confirmed Chief Justice, and Honan, Secretary of the Province, with John Nicoll to push them on to all the Extremities, which he supposes he has Law enough to Justify.

12. All fair Traders to and from New York, are startled at the Liberties given several of Kidd's Crew, freely to walk the Streets there, and observe whon and which way their Vessels go out; besides the Advantages which Pyrates and Breakers of the Laws of Trade, have over them in every respect; and some even of those Men who thought the Lord Connbury's coming a great Deliverance, cannot but complain of the loss of Three Ships with their Cargoes, occasioned by his unreasonable detaining the Man of War appointed for their Convoy above Five Months, meerly for his Dispatches, till the Convoy was ordered another way; and not exercising the like

New England.
Vid. Letter
from Boston.

'id. The Books
the Lords
Commissioners
for Trade and
Plantations.

the Consideration of them, who have the
Power of the Province; and that Province with an high hand, and
in the Possession of ruin;

they are called in the Jersey, were so considerable as
to their no small Cost, they would not have chosen Le-
gal Measures, instead of such as must be abhorred in England;
and why cannot be supported?

3. Whether it is Lawful to bring the Soldiers into the Freedom of the
Province, to put them in their own Power; and the Sheriff's adjourning to a private
Court, for the trial of the Rebels, and there declaring a Sham Election; is not a de-
cay of the Province, and most inconsiderable, in New York?

4. Whether an Encouragement from hence to the present Measures there, would not be
to the Prejudice of the Trade and Customs of England; to the Ruin of many of the
Men in the Province, and tending to its Total Destruction, either by intestine Feuds, or
Invation from the French, to whom it lies open, with a weak Garrison on the Frontiers, and
hardly any Fortification?

4. Whether if Bayard, notwithstanding his acting as if he stood in no need of the Queen's
Majesty, should upon a proper Petition be permitted to bring a Writ of Error in the Supreme
Court there, Col. Smith and Dr. Bruden would be fit Judges, or Mr. Brighton the Attorney General
such a Prosecutor as is both willing and able to maintain the Right of the Crown?

5. Whether, since the most apparent Malice against the Chief Justice, could not raise one
Action, or Matter of Reprach, in relation to any private Cause; and in Causes wherein the
Court was interested, he might have reapt'd much the greater Advantages by favouring the
other; his Integrity does not stand irreprovable?

6. Whether, if it should happen that the Facts with which Bayard is charg'd in the Indict-
ment, and are found by a Jury truly of his Choice, as the Sollicitor challenged for the King
about Twelve out of Eighty, are not High Treason within the Act upon which he was Try-
ed, the Chief Justice can be charg'd with any Severity in applying the Means, then, by the
Governor and whole Council, judg'd necessary for preserving the Government? Since 'tis
evident, tho' Bayard calls this a Conspiracy against his Life, the subduing the Faction by bringing
Head of it only to confess himself guilty of an Offence, without calling it Treason, was as
it was inflicted on. That this has not had its due effect, is owing to others, and to such
Inversion of the Law as cannot but be enquired into.

7. Whether, as it is known that the Libels from New York, against the Administrations of the
Earl of Bellamont and Captain Naufan, are new-vamp'd here by Evidence Mr. West; his
being in the Plot-Office, under the Conduct of Chief Justice Jefferies, and noted Sincerity, will
not his Pretensions to rise upon the Fall of the Chief Justice of that Province?

8. Whether the Usage Mr. Adams has met with, be for the Honour of the Law, or any
Encouragement for an Honest Man to undertake so hazardous a Post, of no Profit, as his
has been? And whether a Dishonest Chief Justice is not the most likely to secure his Sta-
there, or at least to sit easy in it?

Yours very truly
John C. Galt
10.00

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